(22,413.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 792.

ABILENE NATIONAL BANK OF ABILENE ET AL., APPELLANTS,

vs.

JOSEPH N. DOLLEY, AS BANK COMMISSIONER OF THE STATE OF KANSAS, AND MARK TULLEY, AS STATE TREASURER OF THE STATE OF KANSAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 26, 1910.

1 *Citation.*

The United States of America to Joseph N. Dolley, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, appellees, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the District of Kansas, wherein Abilene National Bank, of Abilene, Farmers National Bank, of Abilene, Alma National Bank, of Alma, Citizens National Bank, of Anthony, Home National Bank, of Arkansas City, First National Bank, of Atchison, First National Bank, of Augusta, First National Bank, of Barnard, Baxter National Bank, of Baxter Springs, National Bank of Belleville, of Belleville, Peoples National Bank, of Burlington, First National Bank of Bonner Springs, Jewell County National Bank, of Burr Oak, Caney Valley National Bank, of Caney, Home National Bank, of Caney, Cedarvale National Bank, of Cedarvale, First National Bank, of Chanute, First National Bank, of Cherokee, Montgomery County National Bank, of Cherryvale, First National Bank, of Coffeyville, Condon National Bank, of Coffeyville, Coldwater National Bank, of Coldwater, First National Bank, of Concordia, Chase County National Bank, of Cottonwood Falls, First National Bank, of Delphos, National Bank of Commerce, of Dodge City, First National Bank, of Edna, El Dorado National Bank, of El Dorado, Farmers & Merchants National Bank, of El Dorado, Central National Bank, of Ellsworth, Citizens National Bank, of Emporia, First National Bank, of Englewood, Citizens National Bank, of Eureka,
2 First National Bank, of Eureka, Home National Bank, of Eureka, Army National Bank, of Leavenworth, Citizens National Bank, of Fort Scott, Galena National Bank, of Galena, First National Bank, of Garden City, Garden City National Bank, of Garden City, National Bank of Commerce, of Garnett, First National Bank, of Gaylord, First National Bank, of Girard, First National Bank, of Glasco, First National Bank, of Goffs, First National Bank, of Goodland, Citizens National Bank, of Great Bend, First National Bank, of Great Bend, First National Bank, of Hamilton, National Bank of Harper, of Harper, Security National Bank, of Harper, Hartford National Bank, of Hartford, First National Bank, of Havensville, First National Bank, of Hiawatha, First National Bank, of Highland, First National Bank of Hillsboro, First National Bank, of Hoisington, First National Bank, of Holton, Howard National Bank, of Howard, Citizens National Bank, of Independence, First National Bank, of Independence, Northrup National Bank, of Iola, First National Bank, of Junction City, Central National Bank, of Junction City, Inter-State National Bank, of Kansas City, Central National Bank of Topeka, Capital National Bank of Topeka, Exchange National Bank of Atchison, Stockgrowers National Bank of Ashland,

First National Bank of Anthony, Peoples National Bank of Paola, First National Bank of Pittsburg, First National Bank of Edmond, Peoples National Bank, of Kansas City, First National Bank, of Kingman, First National Bank, of La Harpe, Moffett Bros. National Bank, of Larned, Lawrence National Bank, of Lawrence, First National Bank, of Leavenworth, Leavenworth National Bank, of Leavenworth, First National Bank, of Lebanon, First National Bank, of Leroy, First National Bank, of Liberal, Farmers National Bank, of Lincoln, First National Bank, of Lindsborg, First National Bank, of Logan, First National Bank, of Lucas, First National
3 Bank, of Lyndon, Lyons National Bank, of Lyons, First National Bank, of Madison, Union National Bank, of Manhattan, Mankato National Bank, of Mankato, First National Bank, of Marysville, Moline National Bank, of Moline, First National Bank, of Mound Valley, First National Bank of Mount Hope, Citizens National Bank, of Ness City, First National Bank, of Newton, First National Bank, of Norton, First National Bank, of Nortonville, Oberlin National Bank, of Oberlin, First National Bank, of Olathe, Farmers National Bank, of Osborne, First National Bank, of Osborne, Peoples National Bank, of Ottawa, First National Bank, of Overbrook, First National Bank, of Parsons, National Bank of Commerce, of Pittsburg, National Bank of Pittsburg, of Pittsburg, First National Bank, of Plainville, Farmers National Bank, of Salina, National Bank of America, of Salina, First National Bank, of Scott, Peoples National Bank, of Sedan, First National Bank, of Sedan, First National Bank, of Smith Center, First National Bank, of St. John, St. John National Bank, of St. John, First National Bank, of St. Marys, National Bank of St. Marys, of St. Marys, Farmers National Bank, of Stafford, First National Bank, of Sterling, National State Bank, of Stockton, Stockton National Bank, of Stockton, First National Bank, of Syracuse, First National Bank, of Thayer, First National Bank, of Toronto, First National Bank, of Troy, First National Bank, of Wamego, First National Bank, of Washington, First National Bank, of Waverly, National Bank of Commerce, of Wellington, Wellington National Bank, of Wellington, First National Bank, of Wetmore, First National Bank, of White City, Fourth National Bank, of Wichita, Kansas National Bank, of Wichita, National Bank of Commerce, of Wichita, Cowley County National Bank, of Win-
4 field, First National Bank, of Winfield, Winfield National Bank, of Winfield, Merchants National Bank, of Lawrence, Washington National Bank, of Washington, Manufacturers National Bank, of Leavenworth, First National Bank of Formosa, First National Bank of Kensington, First National Bank of Jewell City, Merchants National Bank, of Topeka, First National Bank, of Prairie View, First National Bank, of Elk City, are appellants, and you are appellees in appeal, to show cause, if any there be, why the judgment rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John C. Pollock, Judge of the Circuit Court of the United States for the District of Kansas, this Fifth day

of November in the year of our Lord one thousand nine hundred and ten.

JOHN C. POLLOCK,
United States District Judge for the District of Kansas.

Service of the foregoing citation is hereby acknowledged this 7th day of November, 1910.

F. S. JACKSON,
Attorney General,
G. H. BUCKMAN,
A. C. MITCHELL,
Solicitors for Defendants Joseph N. Dolley, as Bank Commissioner, and Mark Tulley, as State Treasurer.

5 & 6 [Endorsed:] No. 8817. In the Circuit Court of the United States for the District of Kansas, First Division. Abilene National Bank, of Abilene, et al., Complainants, vs. Joseph N. Dolley, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, Defendants. Citation. Filed Nov. 7, 1910. Geo. F. Sharitt, Clerk. John C. Pollock, United States District Judge for the District of Kansas.

7 In the Circuit Court of the United States for the District of Kansas, First Division.

ABILENE NATIONAL BANK, of Abilene; FARMERS NATIONAL BANK, of Abilene; Alma National Bank, of Alma; Citizens National Bank, of Anthony; Home National Bank, of Arkansas City; First National Bank, of Atchison; First National Bank of Augusta; First National Bank, of Bernard; Baxter National Bank, of Baxter Springs; National Bank of Belleville, of Belleville; Peoples National Bank, of Burlington; First National Bank, of Bonner Springs; Jewell County National Bank, of Burr Oak; Caney Valley National Bank, of Caney; Home National Bank, of Caney; Cedarvale National Bank, of Cedarvale; First National Bank, of Chanute; First National Bank, of Cherokee; Montgomery County National Bank, of Cherryvale; First National Bank of Coffeyville; Condon National Bank, of Coffeyville; Coldwater National Bank, of Coldwater; First National Bank, of Concordia; Chase County National Bank, of Cottonwood Falls; First National Bank, of Delphos; First National Bank of Commerce, of Dodge City; First National Bank, of Edna; El Dorado National Bank, of El Dorado; Farmers & Merchants National Bank, of El Dorado; Central National Bank, of Ellsworth; Citizens National Bank, of Emporia; First National Bank, of Englewood; Citizens National Bank, of Eureka; First National Bank, of Eureka; Home National Bank, of Eureka; Army National Bank, of Leavenworth; Citizens National Bank, of Fort Scott; Galena National Bank, of Galena; First National Bank, of Garden City; Garden City National Bank, of Garden City;

National Bank of Commerce, of Garnett; First National Bank, of Gaylord; First National Bank, of Girard; First National Bank, of Glasco; First National Bank, of Goff; First National Bank, of Goodland; Citizens National Bank, of Great Bend; First National Bank of Great Bend, First National Bank of Hamilton; National Bank of Harper, of Harper; Security National Bank, of Harper; Hartford National Bank, of Hartford; First National Bank of Havensville, First National Bank of Hiawatha, First National Bank of Highland, First National Bank of Hillsboro, First National Bank of Hoisington, First National Bank of Holton, Howard National Bank, of Howard; Citizens National Bank, of Independence; First National Bank of Independence; Northrup National Bank, of Iola; First National Bank of Junction City, Central National Bank, of Junction City; Inter-State National Bank, of Kansas City; Peoples National Bank, of Kansas City; First National Bank of Kingman, First National Bank of La Harpe, Moffett Bros. National Bank, of Larned; Lawrence National Bank, of Lawrence; First National Bank of Leavenworth;
8 Leavenworth National Bank, of Leavenworth; First National Bank of Lebanon, First National Bank of Leroy, First National Bank of Liberal, Farmers National Bank of Lincoln; First National Bank of Lindsborg, First National Bank of Logan, First National Bank of Lucas, First National Bank of Lyndon, Lyons National Bank, of Lyons; First National Bank of Madison; Union National Bank, of Manhattan; Mankato National Bank, of Mankato; First National Bank of Marysville; Moline National Bank, of Moline; First National Bank of Mound Valley, First National Bank of Mount Hope; Citizens National Bank, of Ness City; First National Bank of Newton, First National Bank of Norton, First National Bank of Nortonville, Oberlin National Bank, of Oberlin; First National Bank of Olathe, Farmers National Bank, of Osborne, First National Bank of Osborne, Peoples National Bank, of Ottawa; First National Bank of Overbrook, First National Bank of Parsons, National Bank of Commerce, of Pittsburg; National Bank of Pittsburg, of Pittsburg; First National Bank of Plainville, Farmers National Bank, of Salina; National Bank of America, of Salina; First National Bank of Scott, Peoples National Bank, of Sedan; First National Bank of Sedan, First National Bank of Smith Center, First National Bank of St. John; St. John National Bank, of St. John; First National Bank of St. Marys; National Bank of St. Marys, of St. Marys; Farmers National Bank, of Stafford; First National Bank of Sterling; National State Bank, of Stockton; Stockton National Bank, of Stockton; First National Bank of Syracuse, First National Bank of Thayer, First National Bank of Toronto, First National Bank of Troy, First National Bank of Wamego, First National Bank of Washington, First National Bank of Waverly; National Bank of Commerce, of Wellington; Wellington National Bank, of Wellington; First National Bank of Wetmore, First National Bank of White City, Fourth National Bank of Wichita, Kansas National Bank, of Wichita; National Bank of Commerce, of Wichita; Cow-

ley County National Bank, of Winfield; First National Bank of Winfield; Winfield National Bank, of Winfield; Merchants National Bank, of Lawrence; Washington National Bank, of Washington; Manufactures National Bank, of Leavenworth; First National Bank of Formosa, First National Bank of Kensington, First National Bank of Jewell City, Merchants National Bank, of Topeka; First National Bank of Prairie View, First National Bank of Elk City, Complainants,

vs.

JOSEPH N. DOLLEY, as Bank Commissioner of the State of Kansas, and MARK TULLEY, as State Treasurer of the State of Kansas, Defendants.

Bill of Complaint.

To the Honorable Judges of said court in chancery sitting:

9 The above named complainants, each of whom has its principal place of business in the State of Kansas and in the town, the name of which follows the complainants' name above, bring this, their bill of complaint on their own behalf and on behalf of all other banks within the state of Kansas similarly situated and who desire to join herein and share the benefits of this proceeding against Joseph N. Dolley as Bank Commissioner of the State of Kansas and Mark Tulley as State Treasurer of the State of Kansas, both of the City of Topeka, in the State of Kansas. And thereupon, your orators and each of them complain and say:

I.

That your orators and each of them are corporations, duly organized, existing and doing business under and by virtue of the National Bankin- Acts of the United States, and that your orators and each of them were so organized prior to the first day of January, 1909, and prior to said date and at all times since have been doing a general banking business in the State of Kansas.

That the defendant, Joseph N. Dolley is and at all of the times hereinafter mentioned was the duly appointed, qualified and acting Bank Commissioner of the State of Kansas.

That the defendant, Mark Tulley, is and at all of the times hereinafter mentioned was the duly elected, qualified and acting State Treasurer of the State of Kansas.

That the defendants, Joseph N. Dolley and Mark Tulley as such officers are made defendants herein for the reason that they are charged with the duties and responsibilities of enforcing certain provisions of the Banking Act of the State of Kansas, approved March 6, 1909, and hereinafter referred to.

II.

That the matter in dispute herein exceeds, exclusive of interest and costs, the sum or value of Two thousand dollars, and arises under the Constitution of the United States and the Laws of the United States.

10 III.

That on and prior to the matters hereinafter complained of there existed in the state of Kansas a banking act which took effect March 11th, 1897, entitled as follows: "An Act relating to banks and banking; providing for the organization, management, control, regulation and supervision of banks, and providing penalties for violation of the provisions of this act, and repealing Chapter 43 of the Laws of 1891;" and which said banking act with amendments thereto, up to and including the special session of 1908, contained general provisions for the organization, government and regulation of state banks in the state of Kansas, and which said banking laws of the state of Kansas did not have application to National Banks, and National Banks were in no manner attempted to be controlled or governed thereby.

In said banking laws of the state of Kansas last above referred to, there were no provisions of any kind or nature relating to the creation of a guaranty fund for security of depositors, and no provision by which any of the said banks so organized under the laws of the state of Kansas were required, or should be required to make any deposits with the state treasurer of either bonds or money, or submit to any assessments for the creation of a guaranty fund for the securing of deposits as in the act of the state of Kansas subsequently passed, and hereinafter more particularly complained of.

That at the time when the existing state banks in the state of Kansas were severally organized, the said statute laws of the state of Kansas provided (section 10) that "the shareholders of every bank organized under this act shall be additionally liable for a sum equal to the par value of stock owned, and no more"; and there was no provision in the said banking laws by which any of the assets of any of the said banks of any kind or nature should be appropriated by the Bank Commissioner or by the state treasurer, or by any other person in any manner or form for the purpose of paying claims of depositors in any other bank or banks, and that such appropriation of bonds, money or assets of any of the said banks would have been a violation of the provisions of the said banking laws of the state of Kansas, and more particularly in violation of the provisions of sections 10 and 11 of the said banking laws.

11 In case of insolvency of any of the said state banks, it is provided in Section 28 of the said banking act that all moneys arising from the assets of the said bank or banks, including the moneys realized from the stockholders thereof, should be paid to the creditors of the bank without discrimination or preference as between such creditors, and that each and all of the said banks became organized and entered upon the banking business and obtained credit and deposits and assumed obligations under the provisions of the said banking laws by which each and singular of such creditors should receive an equal pro rata proportion of the assets of any of the said banks in case of insolvency; and that complainant banks, relying upon said laws, and acting in good faith thereunder, have made deposits with state banks and have given credit to state banks in good faith, relying upon the laws of the state of Kansas to the end

that in the event of the insolvency of any bank or banks to which complainants have so extended credits, or with whom they have made deposits such bank or banks would be liable unto complainants for the payment of a pro rata share of the assets of such insolvent banks (including the liability of stockholders) and without any preferential claim in favor of private depositors, as hereinafter more particularly complained of.

That under the said banking laws of the state of Kansas, it is provided that the Bank Commissioner should issue to each of the state banks a certificate showing that said banks were entitled and authorized to transact a general banking business, as provided therein, and that each and singular of the said state banks received such certificate, and under and by virtue of the right and authority therein and thereby vested in the said banks they have ever since the receiving of said certificates severally continued in the banking business, and were and are of right entitled to continue in said banking business.

That under the banking laws of the state of Kansas the right of persons, firms or associations to do a banking business was recognized and authorized, and that under and by virtue *of* thereof there have heretofore been organized, and are now existing, private banks in the State of Kansas, which are denied the privileges of the act hereinafter complained of.

12 IV.

That on or about the 6th day of March, 1909, the legislature of the State of Kansas passed an act entitled: "An act providing for the security of depositors in the incorporated banks of Kansas, creating the bank depositors' guaranty fund of the state of Kansas and providing regulations therefor, and penalties for the violation thereof; which act is Chapter 61 of the Session Laws of Kansas of 1909.

That by Section 1 of said act it is, among other things, provided that, "any incorporated state bank having a paid up and unimpaired surplus fund equal to ten per cent. of its capital, and any bank which may after the passage of this act be authorized to do business in this State, and which shall have been actively engaged in the business of banking for at least one year," is authorized and empowered to participate in the assessments and benefits, and to be governed by the regulations of the bank depositors' guaranty fund of the state of Kansas in said act, "provided that the limitation of one year shall not prevent such participation by a new bank at any time in any city or town in which all banks shall have neglected or failed to become guaranteed banks under the provisions of this act, for a period of six months after the taking effect of this act."

The purpose and intent of the said provisions of the said Section 1 were to confine and limit the privileges of the said guaranty fund provisions of the said act to "incorporated" state banks and to exclude therefrom private banks and trust companies; and by way of inducement and indirect compulsion, to require all existing incorporated state banks to accept of the provisions of said act, it was provided, as above set forth, that if the existing banks in any city or

town should neglect or fail to become guaranteed banks within the period of six months after the said act should go into effect, that a new bank might be organized in such city or town and immediately be permitted to become a guaranteed bank under the provisions of the said act and thereby be given the preferential rights and privileges, if any there be, under the said act, and to the detriment and disadvantage of the existing banks in said city or town.

That by Section 8 of said act it is further provided that
13 trust companies and private banks and national banks, if they shall reorganize as incorporated state banks may become guaranteed banks by complying with the provisions of the said act as in said Section 8 directed and provided. The purpose and intent of said Section 8, coupled with the provisions of said Section 1, above referred to, was and is to require all trust companies and all private banks lawfully organized and doing business under the laws of the State of Kansas, and all national banks lawfully organized and doing business under and by virtue of the national banking laws of the United States to become incorporated state banks under the laws of the state of Kansas subject to the control of the Bank Commissioner of the state of Kansas, and by way of inducement thereto that they, when so reorganized, may become guaranteed state banks of the state of Kansas; otherwise that they shall be and are intended to be discriminated against under and by virtue of the said act of the State of Kansas of March 6th, 1909, herein complained of; and by reason of the premises before stated, and others hereinafter to be referred to, the said act of the State of Kansas, while voluntary in form, is in its application, force and effect a compulsory law in that it compels all banks, private or incorporated, in the state of Kansas, and all trust companies in the state of Kansas, and all national banks in the state of Kansas, to become incorporated state banks of the state of Kansas, or be unjustly and unlawfully discriminated against, in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which provides, among other things; "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

V.

In Section 1 of said act of March 6th, 1909, it is further provided as one of the preliminary proceedings for a bank to become a guaranteed bank that "a resolution of its board of directors, authorized by its stockholders," asking therefor shall be filed with the Bank Comimssioner, and which said provisions by its terms in force and effect authorizes such resolution by a majority of a quorum of the board of directors when authorized by a majority of the stock present and voting at a regular or special stockholders' meeting, and
14 by reason whereof the stockholders not present and voting at such stockholders' meeting, and minority directors, and stockholders, although present and dissenting therefrom, are intended to be made powerless to prevent the said bank or banks from becoming guaranteed banks, and that said stockholders not present and voting,

and stockholders present and dissenting therefrom and minority members of the board of directors are by the terms and provisions of said act deprived of property and of property rights without due process of law, and are denied the equal protection of the laws in violation of Section 1 of Fourteenth Amendment of Constitution of the United States which provides that "no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and is in violation of section 1 of the Bill of Rights of the State of Kansas, which provides, "All men are possessed of equal and inalienable natural rights, among which are life, liberty and the pursuit of happiness," and in violation of Section 2 of said Bill of Rights which provides, "all political power *is* inherent in the people, and all free governments are found- on their authority and are instituted for their equal protection and benefit."

VI.

By section 2 of the said Bank Guaranty Law of March 6th, 1909 it is further provided that the banks, before receiving a certificate that they are entitled to the benefits of said act, as evidence of good faith shall deposit with the State Treasurer of the State of Kansas, subject to the order of the Bank Commissioner, United States bonds, or other bonds, as in said section provided, to the amount of "$500 for every $100,000 or fraction thereof, of its average deposits eligible to guaranty (less its capital and surplus)" provided that each bank shall so deposit not less than $500 and which bond shall be carried under the heading "Guaranty fund with State Treasurer." In lieu of bonds, the said banks may deposit money which shall be exchangeable for bonds at the option of the bank. In addition to said deposit "each bank shall pay in cash an amount equal to one-twentieth of one per cent of its average deposits eligible to guaranty, less its capital and surplus, and the same shall be credited to the Bank depositors' guaranty fund with the state treasurer," subject to the order of the Commissioner. Thereupon said bank shall be entitled to a certificate reciting that it is "guaranteed" as in said act provided.

By section 3 of said act it is further provided that the Bank Commissioner, during the month of January in each year, shall make assessments of one-twentieth of one per cent. on the average guaranteed deposits less capital and surplus of each bank, until the cash fund accumulated shall approximate $500,000 over and above the cash deposited in lieu of bonds. Should said fund become depleted the Bank Commissioners may make additional assessments, provided not more than five of such assessments of one-twentieth of one per cent. shall be made in any one calendar year, the said fund to be held by the state treasurer as by law provided, subject to the order of the Bank Commissioner.

By Section 4 of said act it is further provided that when any bank shall become insolvent the commissioner shall take charge of such bank and proceed to wind up *up* its affairs, and at the earliest moment issue to each depositor a "certificate upon proof of claim bearing six

per cent. interest per annum upon which dividends shall be entered when paid, except where a contract rate exists on the deposits, in which case the certificate shall bear interest at its contract rate."
* * *

"After the officer in charge of the bank shall have realized upon the assets of said bank and exhausted the double liability of its stockholders, and shall have paid all funds so collected in dividends to the depositors, he shall certify all balances due on guaranteed deposits (if any exist) to the Bank Commissioner, who shall then, upon his approval of such certification, draw checks upon the state treasurer, to be countersigned by the Auditor of State, payable out of the bank depositors' guaranty fund in favor of each depositor for the balance due upon such proof of claim as hereinafter provided."

That under and by virtue of the provisions supra, the private depositors whose claims are guaranteed under said act are given a preferential claim over all other creditors of such insolvent bank in that all of the assets of the said Bank (including the liability of
16 stockholders) shall be applied, first, in payment of the claims of private depositors whose claims are guaranteed to the exclusion of any dividend upon the claims of other creditors; and furthermore such private depositors who are guaranteed under the provisions of this act, are entitled to have and receive the par value of their said claims, plus interest thereon at the rate of six per cent. all to the exclusion of and in discrimination against all other creditors of such insolvent bank, and by reason whereof the said provisions in the said act impair the obligations existing between said bank and its other creditors whose claims are not so guaranteed, in violation of Section 10 of Article 1, of the Constitution of the United States, which prohibits any state from passing any "law impairing the obligations of contracts"; and in violation of the provision in Section 1 of Fourtenth Amendment of Constitution of United States which provides that no state shall "deny to any person within its jurisdiction the equal protection of the law."

That complainants, by reason of their business throughout the different parts of the State of Kansas, are necessarily required to and do have and make deposits with state banks in the state of Kansas, some of which have already gone into the guaranty system and in other banks, which, if the law be enforced, will be required to go into the said guaranty system, and that by reason of the premises if any of the said banks shall become insolvent, and their affairs wound up by the Bank Commissioner under said act, these complainants so having deposits in the said banks will be deprived of their lawful and constitutional right to share pro rata with other creditors in the assets of the said banks, and that their contracts with the said depositing banks will be impaired, in violation of the provision of Section 10 Article 1 of Constitution of the United States, and in violation of Section 1 Fourteenth Amendment of Constitution of the United States severally quoted supra.

VII.

That it is provided in Section 6 of the said Bank Guaranty Act

of March 6, 1909, that the only claims which shall have the benefit of the said guaranty provisions are as follows: (*a*) Deposits which do not bear interest; (*b*) Time certificates not payable in less
17 than six months from date, and not exceeding more than one year, bearing interest not exceeding three per cent, and on which interest shall cease at maturity; (*c*) Savings accounts not exceeding in amount $100 to any one person and not subject to check, and upon which the bank has reserved in writing the right to require sixty days' notice of withdrawal and bearing interest not to exceed three per cent.

General deposits of private depositors for which the bank agrees to pay interest do not share in the guaranty provision; time certificates payable in less than six months do not share in the guaranty provision; certificates running for more than one year do not share in the guaranty provision; time certificates bearing interest at more than three per cent. per annum do not share in the guaranty provision; savings accounts in the amount of more than $100 to one person do not share in the guaranty provision; savings deposits, even though less than $100 to any one person, if the bank has not reserved in writing the right to require sixty days' notice of withdrawal, do not share in the guaranty provision; savings accounts which draw interest at a rate exceeding three per cent per annum do not share in the guaranty provision, but all such deposits are discriminated against, and which said discrimination is arbitrary and without reason and is not based upon any classification which can be justified in either law or morals.

By said Section 6 deposits which are rediscounts and deposits which consist of money borrowed from other banks, and all deposits otherwise secured, shall not be guaranteed under said act, and none of which claims are entitled to share in the said guaranty fund, but to the contrary all of the creditors which fall within any of the excluded classes above enumerated are not entitled to share in any of the assets of an insolvent bank, nor in the stockholders' liability until after all of the guaranteed depositors' claims are first paid in full out of said assets and said stockholders' liability, and should the payment of such guaranteed claims exceed the entire assets of the bank and stockholders' liability, the other creditors above enumerated will receive no share whatsoever in the said assets of said insolvent bank, but are unlawfully discriminated against, and by reason of the premises said law is unconstitutional and void in that it impairs the contract obligations between said depositors
18 and the said insolvent bank, in violation of Section 10 of Article 1 of the Constitution of the United States, above quoted, and deprives all of said creditors of property without due process of law, and denies to them the equal protection of the laws in violation of Section 1 of Fourteenth Amendment of Constitution of the United States.

In this connection complainants further aver that in the transaction of banking business it is necessary for banks to have, and they do have and complainant banks have moneys on deposit with banks which have already gone into the bank guaranty system, and

with banks which have made application and intend to go into the bank guaranty system, and other banks which the defendants mean and intend to require and compel to go into the bank guaranty system; and it is necessary in the banking business in the state of Kansas for banks to borrow money temporarily from other banks, and to rediscount paper in other banks, including banks which have gone into the guaranty system, and banks which have made application and intend to go into the bank guaranty system, and in banks which the defendants intend to compel to go into the bank guaranty system, and all of which claims, credits, loans and discounts, in law and morals, are entitled to be protected equally with other claims against any insolvent bank, and that by reason of the premises Section 6 of the said bank guaranty law creates an unlawful and unreasonable discrimination as between claims, creditors and banks, and deprives and impairs the obligations existing between them and such insolvent bank or banks in violation of Section 10 of Article 1 of the Constitution of the United States and denies to them the equal protection of the laws and deprives them of property without due process of law, in violation of Section 1 Fourteenth Amendment of Constitution of United States, and by reason whereof sail guaranty banking act is unconstitutional and void.

VIII.

It is provided in Section 7 of said bank guaranty law of March 6th, 1909, that "No bank which pays interest at a rate greater than three per cent. per annum on any form of deposit, or pays any interest on savings deposits withdrawn before July 1st or January 1st next following the date of the deposit, or on any time 19 certificate cashed before maturity, shall be permitted to participate in the benefits of this act;" and which said provision is intended and will operate to deprive all of the supposed guaranteed depositors in any insolvent bank of the right or privilege to receive any benefit out of the said guaranty fund providing the bank in which there are such depositors shall at any time violate any of the provisions in the said paragraph of Section 7 above quoted. That said provision in said Section 7 of the said act gives to the defendant, Joseph N. Dolley, Bank Commissioner of the State of Kansas, arbitrary power and authority to deprive any bank of the benefits of said law, and of the guaranty provisions therein provided, and to deprive the guaranteed depositors in any such bank of the rights and privileges intended to be secured to them under said law, if such bank, after having accepted of the provisions of the law shall pay interest at a greater rate than three per cent. per annum upon any deposit, or shall pay interest on any savings deposit withdrawn before July 1st or January 1st next following, the date of the deposit, or shall pay interest on any time certificate which may be cashed before maturity, and that each and all of said provisions are unreasonable, unjust and arbitrary, and are not based upon any reasonable classification, and the provisions in said Section 7 of said act in their operation and effect destroy the obligations of the contract created between such banks as accept the

provisions of the law, and the state of Kansas, and the contracts between such banks and their guaranteed depositors in violation of Section 10 of Article 1 of Constitution of the United States, which forbids any state passing a "law" impairing obligations of contracts, and operates to deprive such banks and their depositors of property without due process of law, and denies to them the equal protection of the laws, in violation of Section 1 of Fourteenth Amendment of Constitution of the United States, and by reason of the premises said law is unconstitutional and void.

IX.

That the amount of the deposits required to be made with the state treasurer of the state of Kansas of either bonds or money, as provided for in Section 2 of the said bank guaranty act, and of the guaranty assessments provided for and authorized to be made under section 2 and Section 3 of said Bank Guaranty act will as to each of the complainant banks in case they be held to be entitled to participate in said law, exceed the sum or value of $2,000 exclusive of interest and costs.

That the depositors in banks which have not accepted the provisions of said law are not guaranteed while the depositors in banks which have accepted the provisions of said law suppose themselves to be guaranteed and are led to believe by the state of Kansas and by the defendant J. N. Dolley as Bank Commissioner of the state of Kansas, and by said guaranteed banks that they are guaranteed and the state of Kansas advertises that the depositors in banks which have accepted the provisions in said law are guaranteed; and that in case the law remains in force and effect banks which may not accept the provisions of said law will be forced to cease doing business for the reason that all, or a large part of their deposits will be withdrawn, and will be forced to wind up their business or to reincorporate in such a way as to entitle them to the benefits of said law, if any such benefits there are. That the right of said complainant banks and the right of each of them to do business and exercise the franchise of national banks is of the value of more than $2,000 exclusive of interest and costs to each of said banks and in case said law is enforced your orators and each of them will be compelled either to go out of the banking business or to surrender their charter as national banks and to reincorporate as state banks.

That your orators and each of them are entitled and authorized under the laws of the United States to carry on a banking business and your orators and their depositors are entitled to the equal protection of the law and the said act discriminates against your orators' depositors and in favor of depositors in state banks in that depositors in complainant banks are not guaranteed and cannot be guaranteed while depositors in state banks or a part of them, will in case said law be enforced, be guaranteed.

21

X.

That the purpose, object and intent of the said Bank Guaranty Law is to take the property of each and all of the banks that accept of the provisions of said act, and to compel each and all of the banks which accept of the provisions of said act to set a part and deposit with and pay over to the Treasurer of the State of Kansas bonds, money and assessments, as in sections 2 and 3 of said act provided, and that the said bonds, money, and assessments shall be appropriated by said Joseph N. Dolley, Bank Commissioner, under the provisions of said act, in payment of the private claims of the class described as guaranteed deposits in some other bank which may become insolvent, and which appropriation and payment is a gratuity to such private claimants, as such depositors, and to whom the contributing banks are under no obligation, contractual or otherwise, and which is a taking of the money and property of the contributing banks without due process of law, and is a denial to each of them of the equal protection of the law, in violation of section 1 of Fourteenth Amendment of Constitution of United States, and by reason whereof said Bank Guaranty Law is unconstitutional and void.

That when the stockholders in said complainant banks became the owners of the stock in said banks now owned by them, said banks had no power or right to embark their funds in any scheme for the guaranty of the payment of deposits in other banks and had no power or authority to risk their funds by entering into any such guaranty scheme, and that the right of said stockholders in said banks to have said banks continue in the banking business alone and to refrain from risking their funds in the insurance business was and is a valuable contract and property right, and that the said law purporting to authorize the investment of the funds of said banks in said guaranty scheme and the investment of said funds in said scheme impairs the contract rights of said stockholders and deprives said stockholders of property without due process of law, in that it lessens and diminishes the assets of said banks which give value to said stock, and takes the property of said stockholders to pay debts for which they are in no way liable without any benefit to them, and without relieving them in any way from their liability as stockholders; and that without the unanimous consent of all

22 of their respective stockholders your orators cannot participate in said law and fund and that your orators and each of them are unable to procure such unanimous consent and are therefore deprived of the benefits of said law if any benefits there are.

XI.

That said Bank Guaranty Act in and of itself is unconstitutional and void, in that it creates unlawful and unreasonable discrimination in various and many particulars between banks which may accept the provisions of said act and banks which may not accept the provisions of said act, and arbitrarily classes said banks without reason in this; That banks which pay more than three per cent interest per annum

on deposits of any kind may not accept the provisions of said act, while banks which do not pay more than three per cent interest per annum on deposits of any kind may accept the provisions of said act; and that banks which have not a paid-up surplus equal to ten per cent of their capital stock may not accept the provisions of said act, while banks which have such paid-up surplus may accept the provisions of said act; and that banks which have not been doing business for more than one year may not accept the provisions of said act, while banks which have been doing business for more than one year may accept the provisions of said act, with the further arbitrary and unreasonable classification in this connection that banks which have not been doing business for more than one year, but which are situated in cities in which all banks shall have neglected or failed to become guaranteed banks under the provisions of said act for a period of six months after the taking effect of this act, may accept the provisions of this act. That such classification of banks is arbitrary and unreasonable and deprives banks which are not permitted to accept the provisions of said act of property without due process of law and of the equal protection of the laws, in violation of the provisions of section 1 of the Fourteenth Amendment to the constitution of the United States.

XII.

That said Bank Guaranty Act in and of itself is unconstitu-
23 tional and void, in that it creates an unlawful and unreasonable discrimination in various and many particulars between banks which may and do accept its provisions, in this: That under said law banks which have equal deposits subject to guaranty but unequal capital and surplus are not subject to the same amount of assessment to protect the same amount of deposits, but that banks having the largest capital and surplus are required by said law to pay the smallest amount of assessment; and in this, that the minimum amount of bonds which may be deposited by any bank is $500 and that the minimum assessment that may be paid by any bank is twenty dollars, and that banks having small amounts of deposits are required thereby to pay assessments on such amounts at a higher rate per cent than other banks. That such classification of said banks is unreasonable and arbitrary and denies certain of said banks of equal protection of the laws as above set forth, and deprives them of property without due process of law as above set forth—all contrary to the provisions of section 1 of the Fourteenth Amendment to the Constitution of the United States.

XIII.

That said Bank Guaranty Act in and of itself is unconstitutional and void, in that it creates an unlawful and unreasonable discrimination in various and many particulars between the depositors of banks and those wishing to do business with banks, in this: That depositors whose deposits bear interest are not permitted to receive the benefits of said act, while depositors whose deposits do not bear interest are permitted to receive the benefits of said act; and that depositors whose

deposits are represented by certificates not payable in less than six months and not extending for more than one year, bearing interest at not to exceed three per cent per annum and on which interest shall cease at maturity are entitled to the benefits of said act, while depositors whose deposits are represented by certificates for different terms or which bear interest at a greater rate than three per cent per annum are not entitled to the benefits of said act; and that depositors having savings accounts not exceeding in amount one hundred dollars and not subject to check, and upon which the bank has reserved in writing the right to require sixty days' notice of withdrawal, and
24 bearing interest at not to exceed three per cent, are entitled to the benefits of said act, while depositors having savings accounts exceeding one hundred dollars in amount or which are subject to check or upon which the bank has nor reserved in writing the right to require sixty days' notice of withdrawal, or which bear interest at a greater rate than three per cent per annum, are not entitled to the benefits of said act; and in this: That in case of insolvency depositors whose deposits by the terms of the contract of deposit do not bear interest are entitled to certificates upon proof of their claim, which certificates and the claim represented thereby shall bear interest at the rate of six per cent per annum, while depositors whose deposits by the contract of deposit bear interest at the rate of three per cent per annum or less are entitled in case of insolvency of the bank to certificates which bear interest only at said contract rate of three per cent per annum or less. That such classification is arbitrary and unreasonable, and deprives certain of said depositors as above set forth of the equal protection of the laws and deprives them of property without due process of law, contrary to the provisions of section 1 of the Fourteenth amendment to the Constitution of the United States.

XIV.

That the effect of said bank guaranty act is to embark the State in the private business or pursuit of carrying on a mutual insurance company.

That said act requires the State Printer, at the expense of the state, to print and furnish forms and records to be used in carrying out said law, and requires the Bank Commissioner and his clerks and assistants and the State Treasurer and his clerks and assistants to employ the time for which they are paid by the State in carrying out the said law.

That there are more than 700 banks in the State of Kansas which are entitled to become guaranteed banks under said law, and that the carrying on of said mutual insurance scheme will be a great expense to the State which can be paid only by money raised by taxation.

25 That the State of Kansas and the Legislature thereof have no power to embark in the private business of insurance or to expend money of the State raised by taxation in carrying on mutual insurance companies and that all money used in the carrying out of said scheme will be taken from the taxpayers of the state of Kansas without due process of law, and the effect of said act will be to de-

prive the taxpayers of Kansas of property without due process of law.

That said Bank Guaranty Law in its force and effect, and in its practical application, is intended to be and is unjustly and unlawfully discriminatory in favor of and in behalf of the banks which shall accept of its provisions, and against all banks, State or National which shall not accept of its provisions.

That said law is in its very essence, fraudulent and promotive of fraud and deception. In its practical workings it gives depositors a false assurance, and persuades and tends to persuade them that they are guaranteed and secured when they are in fact not guaranteed or secured. It requires of the Bank Commissioner a certificate which is false and misleading, and which in its practical working, and especially because it emanates from the sovereign State, tends to mislead and deceive the public as to the degree of security offered. It encourages, makes easy, and directly causes, false representations by so-called guaranteed banks, which banks are securing deposits by false signs and advertisements tending to persuade the public that their depositors are guaranteed by the State of Kansas and by an adequate special fund provided by the State of Kansas. Said act thus gives banks which accept its provisions, the right and power, under the guise and sanction of law, to obtain deposits by false and fraudulent representations; and by virtue of said law said banks are, as a matter of fact, so obtaining deposits to the great injury of banks honestly and fairly conducted.

That said law in its practical operation and effect (under and by virtue of the certificate which under the said act is to be issued by the Bank Commissioner to the banks which accept of the said guaranty provision) is intended to and will enable, authorize and empower the banks which accept the guaranty provisions to hold out to depositors and to the public that the depositors therein are guaranteed,
26 and that depositors in other banks are not so guaranteed, and all other banks are prohibited by the said law from giving out or advertising that their deposits are guaranteed, whereby and by reason whereof banks of small capitalization and otherwise insecure may induce and persuade citizens of the State of Kansas, and others, to deposit their money in said guaranteed banks in preference to making such deposits in banks not so guaranteed, and therein and thereby to wrongfully discriminate against and to deplete and diminish the deposits in banks not under the guaranteed system and to the advantage of the banks which are in the guaranteed system, and as against all banks which cannot, under the terms of the act, go into the said guaranty system, and including National banks, and as against trust companies which cannot go into the system; and by reason of the premises the said act is unconstitutional and void, in that it constitutes an unlawful and unreasonable discrimination in favor of certain banks as hereinbefore described, and as against other banks and trust companies as hereinbefore described, and is unconstitutional and void, being in violation of the provisions of section 1 of Fourteenth Amendment of Constitution of the United States hereinbefore more specifically pleaded.

XV.

The said Bank Guaranty Act in and of itself is unconstitutional and void, in that it creates an unlawful and unreasonable discrimination in various and many particulars between the banks which may accept of the provisions of said act and of the banks which do not or cannot accept of the provisions of said act, which discrimination consists, among other things: (*a*) in the fact that the depositors in one class of banks have the privileges of the guaranty provision, while the depositors in other banks do not have such privileges; (*b*) that under said act certain banks of the State are prohibited from accepting of the provisions of the said act, while other banks, by reason of the manner of conducting their business, or in the judgment of the Bank Commissioner, may accept of the provisions of the said Bank Guaranty Act; (*c*) that as to the guaranteed banks their guaranteed depositors have a preferential claim over all other creditors, even to the absorption of all of the assets of the bank to the exclusion of other creditors, while as to banks not entering into the guaranty system all creditors share pro rata in the division of the assets
27 of the bank in case of insolvency; (*d*) that as to national banks the national banking act of the United States provides that all creditors of the bank shall share pro rata in the assets of the bank and the payment of the assets to depositors in preference to all other creditors is by the terms of the National Banking Act prohibited, and that the basis and purpose of the said Bank Guaranty Act is to create a preferential class of banks out of, from and among the banks of the state of Kansas, as appears in many particulars and provisions of the said act too numerous to herein recite or specifically mentioned, and as will more particularly appear in the said act; and that by reason whereof the said act is unconstitutional and void in that it deprives banks which do not, and banks which cannot, and trust companies which cannot accept of the provisions of the said act of the equal protection of the laws, in violation of the provisions to that effect, in Section 1 of Fourteenth Amendment of Constitution of United States.

XV.

That by Section 16 of the said Bank guaranty act it is provided "All acts and parts of acts in conflict with this act are hereby repealed in so far as they so conflict, but no provision of any banking law or other statute of this state shall be construed to be amended, modified or repealed, except in so far as necessary to permit the unrestricted operation of this act as applied to banks participating in the privileges of this act."

That no where in the said act is there any other provision relating to the amendment or repeal of any section or any part of the existing banking laws of the state of Kansas, and there is no way of determining what section or part of any section of the existing banking laws of the State of Kansas are thereby intended to be repealed or amended, nor what repeal or amendment of any section or part of the existing banking law shall be construed or determined to interfere with the unrestricted operation of said act, nor in how

far any provision of the existing banking law shall be determined to be in conflict with the provision of said bank guaranty act, nor what section or part of any section or sections of the existing banking laws of the state of Kansas are in fact repealed or intended to be repealed, and that by reason whereof the said bank guaranty law, in its entirety, is unconstitutional and void, in that it is
28 indefinite and uncertain as to sections repealed or amended, and is in conflict with various provisions of sections of the existing banking laws of the State of Kansas, and is in conflict with section 16 of Article 2 of the Constitution of the state of Kansas, and is unconstitutional and void in that it is in violation of the provisions of section 17 of Article 2 of the Constitution of the state of Kansas.

That in support of the averments in the different paragraphs of this bill contained, the said bank guaranty act is made part hereof and attached hereto as exhibit "A."

XVII.

That said bank guaranty act contains a provision in Section 8 that national banks may reorganize as state banks, and thereby become guaranteed banks under said law, and by Section 13 of said act it is provided that any National bank doing business in the state of Kansas, under the laws of the United States, may at its option participate in the assessments and benefits of the bank depositors' guaranty fund, "upon the same terms and conditions as apply to state banks * * * Should a national bank disregard or refuse to comply with any recommendation made by the Bank Commissioner in conformity with the provisions of this act, it shall immediately be subject to the provisions and penalties of this act and its certificate of membership in the bank depositors' guaranty fund shall be canceled."

That said act in and of itself does not and cannot confer power upon national banks to accept the benefits or provisions thereof, and that national banks are without power or authority, under the national banking act of the United States to guarantee the deposits in any other bank, or to appropriate or pay any part of their assets for the purpose of guaranteeing deposits in any other bank, either state or national, and for national banks to participate, in the said guaranty fund provision would be ultra vires and would operate to forfeit, and would subject the charters of each and singular of the said national banks to forfeiture and the closing up of such banks who participate therein under the orders and direction of the Comptroller of the Currency.

29 That by the terms of the said bank guaranty act the assets of a national bank (including complainants) which should be deposited under sections 2 and 3 of said act are subject to forfeiture if such national banks (including complainants) shall fail to comply with any of the requirements of the Bank Commissioner of the State of Kansas made pursuant to said act.

That under the said national banking act the said banks are under the control of the officers of the United States, and particu-

larly under the control of the Comptroller of the Currency, and in case of the insolvency of a national bank it is taken possession of and its affairs are administered under an officer of the United States, and its assets are distributed pro rata among all its creditors. Should said bank become subject to the Bank Guaranty law of Kansas, it will be subject to the supervision of the Bank Commissioner of the state of Kansas, and in case of insolvency would be taken possession of by the Bank Commissioner of the state of Kansas, and its assets would be distributed, first, in payment of the claims of guaranteed depositors to the exclusion of all other creditors, and that by reason of the premises, and of other matters and things which appear in the said respective laws, there would be a clash between federal and state jurisdiction over a national bank that should accept of the provisions of the said bank guaranty law. For these and for other reasons appearing in the said national banking act, and in the said bank guaranty law, national banks cannot participate in the said bank guaranty fund provisions, and its depositors cannot participate in the privileges of the said bank guaranty fund provisions.

That the Governor, Bank Commissioner and Attorney General of the State of Kansas caused to be presented to the President of United States, the Secretary of the Treasury and to the Comptroller of the Currency a request and application that national banks in the state of Kansas might be permitted to accept of the provisions of the said bank guaranty law, and that such proceedings followed thereupon that the matter was referred to the Department of Justice for a judicial opinion, and the matter was then and there argued before the Attorney General of the United States orally, and by a printed argument, which recited in the opening paragraph thereof, that the consideration of the questions was requested by the State of Kansas through its Governor, Bank Commissioner and Attorney General, and which said printed argument is signed by Fred S. Jackson, Attorney General and John S. Dawson, of counsel, and that after said hearing was had and argument made, the Department of Justice, under date of April 6th, 1909, by and through George W. Wickersham, Attorney General, handed down a written opinion wherein it was ruled, adjudged and determined that national banks were without corporate authority to comply with or accept of the privileges of the said bank guaranty law, and that to do so would be ultra vires such corporations, and that the said bank guaranty law was inconsistent with and in conflict with the national banking act.

Plaintiffs further aver that by reason of the premises in the last preceding paragraphs averred that the said bank guaranty act is unconstitutional and void in that in its force, effect and operation it constitutes and creates an unlawful and wrongful discrimination against national banks, and if enforced in the state of Kansas as to state banks will deprive national banks (including complainants) of property without due process of law, and deprive them of the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment of Constitution of United States.

That under the acts of Congress, authorizing the incorporation

of National Banks, a charter was issued to each of your orators, which charter then and there became a contract between your orators and the Government of the United States, and that the guaranties of the Federal Constitution that no State should pass any law impairing the obligation of contracts, or deny to any person the equal protection of the law, then and there became a part of said contract, and the purpose, intent and effect of said Chapter 61, Laws 1909, is to impair the obligation of said contract, and deny to your orators the equal protection of the law. That your orators, under their respective charters, became the agencies and instrumentalities of the Federal Government, and if the provisions of said Chapter 61, Laws 1909, are enforced, your orators will be deprived of their trade and business, and their efficiency as such agents and instrumentalities of the Federal Government will be impaired and destroyed.

31 That each and all of the stockholders of complainant banks subscribed to such stock relying upon the guarantees of the Federal Constitution, and that the said banks in which they became stockholders would be permitted to carry on and prosecute their business in the state of Kansas without any interference by partial and discriminating legislation, or legislation which would give to state banks an unequal and undue advantage over National Banks. That said chapter 61, Laws of 1909, in its effect and operation, gives to state banks an unequal and undue advantage over National Banks, and impedes and frustrates them in the prosecution of their business, and impairs their efficiency, and deprives them of their trade, and induces a withdrawal of their deposits, and thereby destroys the value of the stock so held by their shareholders. That your orators, and their respective share holders are taxpayers and have paid large sums of money into the general revenue fund of the state on account of levies and assessments made against the real estate owned by your orators, and on account of their capital stock, and will be required to continue to make such payments, and that such funds have been and are being paid out by the defendants, and, unless enjoined, will continue to be paid out in connection with the operation and enforcement of said chapter 61, Laws of 1909, and be used to build up and foster an unequal and unjust combination of state banks against national,—the operation and effect of which will compel your orators to surrender their charters as National Banks and their trade and business will be destroyed.

That the amount of taxation by reason of this law will not exceed $2000 as to any one Bank complaining herein.

32 XVIII.

Complainants further aver that all the sections of the said bank guaranty act hereinbefore referred to and complained of as being in violation of the provisions of the Constitution of the United States and of the provisions of the Constitution of the state of Kansas hereinbefore specifically mentioned, and section 13 thereof, are material and essential parts of the said act, and without which the said act would not have been passed by the legislature nor approved by the

Governor of said state, and that by reasons of the premises the entire act is null and void, and in violation of the provisions of the Constitution of the United States hereinbefore referred to, and is in violation of the provisions of the Constitution of the state of Kansas, hereinbefore referred to.

XIX.

Complainants further aver that the said defendants, Joseph N. Dolley, Bank Commissioner, and Mark Tulley, State Treas-
33 urer, are meaning and intending to enforce each and singular of the obligations and provisions of the said law and have already admitted a considerable number of state banks of the state of Kansas to the privileges granted under said law, and to that end have issued to certain banks certificates to that effect, and that the applications of other state banks are now pending before the Bank Commissioner for examination, and that the said Bank Commissioner threatens, means and intends to accept and receive the said application and to issue to the said banks so applying certificates, as provided for in section 2 of said act, unless restrained and enjoined by the order of this court, all of which is and will be to the irreparable damage of the complainants herein, as hereinbefore more specifically appears, and that complainants are without adequate remedy at law in the premises.

Wherefore complainants pray your Honors for the granting of a temporary injunction enjoining and restraining the defendants, Joseph N. Dolley, Bank Commissioner of the state of Kansas, and Mark Tully, state treasurer of the state of Kansas, from proceeding to act under or enforce the said law of the legislature of the state of Kansas, approved March 6th, 1909, and that they be enjoined and restrained from receiving deposits of bonds or money, as in section 2 provided for, and from issuing certificates to any bank or banks, as in section 2 provided for, and that they be further enjoined and restrained from enforcing any of the provisions of the said act, and from attempting to exercise any powers or rights under the said act, and restrained and enjoined from interfering with the complainants by reason of their failure to make application to participate in the provisions of the said banking act.

And further pray, that upon the final hearing herein it shall be adjudged, decreed and determined that the said banking act, approved March 6th, 1909 of the state of Kansas be and is unconstitutional, null and void, as being in violation of the provisions of the Constitution of the United States and of the Constitution of the state of Kansas, for the reasons in that behalf in the bill of complaint set forth, and that such injunction be thereupon made perpetual, and for such other and further relief as the complainants may in equity and good conscience be entitled to in the premises.

34 May it please your honors to grant unto these complainants a writ of subpœna of the United States of America, directed to Joseph N. Dolley, Bank Commissioner of the State of Kansas, and Mark Tulley State Treasurer of the state of Kansas, commanding them that on a certain day, and under a certain pen-

alty therein to be specified, personally to be and appear in this Honorable court then and there to make full, true and complete answer to all and singular the averments, but not under oath or affirmation (an answer under oath or affirmation being hereby expressly waived), and to stand to and abide by such order and decree herein as this Honorable court shall deem meet and agreeable to equity and good conscience.

CHESTER I. LONG,
JOHN L. HUNT,
J. W. GLEED,
Solicitors for Complainant.

B. P. WAGGENER,
JOHN L. WEBSTER,
Of Counsel.

STATE OF KANSAS,
Shawnee County, ss:

J. W. Gleed, being first duly sworn on oath deposes and says: That he is one of the solicitors for said complainants and this affiant says that he has read the foregoing bill of complaint, knows the contents thereof, and that the allegations therein are true in fact, except as to such matters as are therein alleged to be stated upon information and belief, or by way of intendment, and as to such matters he believes the same to be true.

J. W. GLEED.

Subscribed and sworn to before me, a Notary Public in and for the county of Shawnee state of Kansas, this 13th day of September, 1909.

[SEAL.] L. D. STRICKLER,
Notary Public in and for the County of Shawnee, State of Kansas.

Com. Expires Sept. 26, 1911.

35 EXHIBIT A.

Bank Depositors' Guaranty Law.

[Senate Bill No. 549, Session of 1909.]

An act providing for the security of depositors in the incorporated banks of Kansas, creating the bank depositors' guarantee fund of the State of Kansas, and providing regulations therefor, and penalties for the violation thereof.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any incorporated state bank doing business in this State under the general banking laws of Kansas, having a paid-up and unimpaired surplus fund equal to ten per cent of its capital, and any bank which may after the passage of this act be authorized

to do business in this State, and which shall have been actively engaged in the business of banking for at least one year, and having such surplus fund, is hereby authorized and empowered to participate in the assessments and benefits and to be governed by the regulations of the bank depositors' guaranty fund of the State of Kansas hereinafter provided for: *Provided,* That the limitation of one year shall not prevent such participation by a new bank at any time in any city or town in which all banks shall have neglected or failed to become guaranteed banks under the provisions of this act for a period of six months after the taking effect of this act. Before any bank shall become a guaranteed bank within the meaning of this act a resolution of its board of directors, authorized by its stockholders, duly certified by its president and secretary, asking therefor, in form to be provided by the Bank Commissioner, shall be filed with said Bank Commissioner, who shall, upon the filing of such resolution, make a rigid examination of the affairs of such bank, and if it is found to be solvent, to be properly managed and conducting its business in strict accordance with the banking law, he shall, after the bank shall have deposited with the State Treasurer bonds or money as hereinafter provided, issue to such bank a certificate stating in substance that said bank has complied with the provisions of this act, and that its depositors are guaranteed by the bank depositors' guaranty fund of the State of Kansas, as herein provided.

SEC. 2. Before receiving such certificate from the Bank Commissioner each bank entitled to the same according to section 1 of this act shall, as an evidence of good faith, deposit, and shall at all times maintain with the State Treasurer (subject to the order of the Bank Commissioner when countersigned by the Auditor of State) United States bonds, Kansas State bonds, or the bonds of any county, township, school district, board of education or city within the State of Kansas, to the amount of five hundred dollars for every one hundred thousand dollars or fraction thereof of its average deposits eligible to guaranty (less its capital and surplus) as shown by its last four published statements: *Provided,* That each bank shall so deposit not less than five hundred dollars, and the State Treasurer shall issue his receipt therefor in triplicate, one to the bank, one to the Auditor of State, and one to the Bank Commissioner. Such bonds only shall be accepted as the School Fund Commissioners of the State of Kansas are permitted to buy, and shall bear the certificate of the Attorney-General of the State of Kansas stating that in his opinion said bonds have been legally issued. Said bonds, or cash in lieu thereof, shall not be charged out of the assets of the bank, except as hereinafter provided, but shall be carried in its assets under a heading, "Guaranty Fund with State Treasurer," until such time as said
36 bank shall default in payment of assessments hereinafter provided for. In lieu of bonds the bank, at its option, may deposit money, which deposit shall be exchangeable for acceptable bonds when the bank elects to make the substitution. In addition to above each bank shall pay in cash an amount equal to one-twentieth of one per cent of its average deposits eligible to guaranty, less its capital and surplus, and the same shall be credited to the bank de-

positors' guaranty fund with the State Treasurer, subject to the order of the Bank Commissioner, and the State Treasurer shall issue his receipt therefor in triplicate, one to the bank, one to the Auditor of State, and one to the Bank Commissioner: *Provided,* That the minimum assessment to be required from any bank shall be twenty dollars: *Provided further,* That any bank seeking to participate in the assessments and benefits of this act after the first annual assessment for the year 1910 shall have been made, shall be assessed an amount approximately equal to its proportionate share of the money then in the bank depositors' guaranty fund after all losses shall have been deducted, the amount of such assessment to be determined by the Bank Commissioner. The last above mentioned assessment, however, shall not be required of new banks formed by the reorganization or consolidation of banks which have previously complied with the terms of this act. Upon the deposit and acceptance of such bonds (or money) and the payment of said assessment, then the payment of such deposits of said bank as are specified in this act shall be guaranteed as herein provided, and the bank entitled to its certificate.

SEC. 3. The Bank Commissioner shall, during the month of January of each year, make assessments of one-twentieth of one per cent of the average guaranteed deposits, less capital and surplus, of each bank (the minimum assessment in any case to be twenty dollars), until the cash fund accumulated and placed to the credit of the bank depositors' guaranty fund shall be approximately five hundred thousand dollars over and above the cash deposited in lieu of bonds, when he shall discontinue such assessments. Should such fund become depleted the Bank Commissioner shall make such additional assessments from time to time as may become necessary to maintain the same: *Provided,* That not more than five such assessments of one-twentieth of one per cent each shall be made in any one calendar year. The Treasurer of the State of Kansas shall hold this fund in the State Depository banks as provided by law governing other State funds, subject to the order of the Bank Commissioner to be countersigned by the Auditor of State, for the payment of depositors of failed guaranteed banks, as hereinafter provided. The State Treasurer shall credit this fund quarterly with its proportionate share of interest received from State funds, computed at the minimum rate of interest provided by law, upon the average daily balance of said fund.

SEC. 4. When any bank shall be found to be insolvent by the Bank Commissioner he shall take charge of such bank as provided by law, and proceed to wind up its affairs; and he shall, at the earliest moment, issue to each depositor a certificate, upon proof of claim, bearing six per cent interest per annum, upon which divi-
37 dends shall be entered when paid, except where a contract rate exists on the deposit, in which case the certificate shall bear interest at the contract rate; notice of the amount of each dividend to be paid creditors, and the date when such payment is to be made, shall be published in two consecutive issues of a paper of general circulation in the county or city in which such failed bank is located, and a corresponding notice posted on the door of the re-

ceiver's office, and interest shall cease on each dividend on the day named in such notice. The Bank Commissioner shall likewise publish a notice of the date upon which he will make payments of any balance due on such proof of claim, and interest shall cease on the day so advertised, and said proof of claim shall so state. After the officer in charge of the bank shall have realized upon the assets of such bank and exhausted the double liability of its stockholders, and shall have paid all funds so collected in dividends to the depositors, he shall certify all balances due on guaranteed deposits (if any exist) to the Bank Commissioner, who shall then, upon his approval of such certification, draw checks upon the State Treasurer, to be countersigned by the Auditor of State, payable out of the bank depositors' guaranty fund, in favor of each depositor for the balance due on such proof of claim as hereinafter provided. If at any time the available funds in the bank depositors' guaranty fund shall not be sufficient to pay all guaranteed deposits of any failed bank, the five assessments herein provided for having been made, the Bank Commissioner shall pay depositors *pro rata* and the remainder shall be paid when the next assessment is available: *Provided, however,* That whenever the Bank Commissioner shall have paid any dividends to the depositors of any failed bank out of the bank depositors' guaranty fund, then all claims and rights of action of such depositors so paid shall revert to the Bank Commissioner for the benefit of said bank depositors' guaranty fund, until said fund shall have been fully reimbursed for payments made on account of such failed bank, with interest thereon at three per cent per annum.

SEC. 5. A penalty of fifty per cent of the amount of said assessment shall be added to the assessment of any bank not remitting as aforesaid within thirty days after receipt of notice of such assessment from the Bank Commissioner, and if any bank which shall have been assessed and notified as aforesaid shall fail to remit the amount of said assessment as herein provided, a sufficient amount of its bonds (together with the unexpired coupons) shall be immediately sold by the Bank Commissioner at public sale, and the proceeds used to pay said assessment. Any balance remaining from the proceeds of such sale after the payment of such assessment shall remain to the credit of the bank in the depositors' guaranty fund. The said balance, together with the remainder of the bonds (or cash in lieu thereof) shall be forfeited to the bank depositors' guaranty fund if the bank does not, within sixty days from default in payment of such assessment, remit the full amount of such assessments and penalty to date, and restore the amount of its bonds, or money pledged, as evidence of good faith. Upon the bank's failure to remit its assessments according to the terms of this act the Bank Commissioner shall immediately examine
38 such bank, and if it is found in his judgment to be insolvent he shall take charge of and liquidate said bank according to law. If said bank be found solvent, the Bank Commissioner shall cancel its certificate as a guaranteed bank and cause to be displayed in its banking rooms, in a conspicuous place, continuously for six months, a card not smaller than twenty inches

by thirty inches and in large, plain type, reading as follows: "This bank has withdrawn from the bank depositors' guaranty fund, and the guaranty of its deposits will cease on and after ——." The date on this card shall be a date six months after the first posting of such card Any bank electing to withdraw from the bank depositors' guaranty fund may do so by giving notice to the Bank Commissioner and displaying a card as aforesaid, and at the expiration of the six months as aforesaid may receive its bonds (provided always that said bank shall have paid assessments in full to date) when the affairs of all failed banks in liquidation at the expiration of said six months shall have been closed up and the said bank shall have paid its assessments on account of same.

SEC. 6. Deposits which do not bear interest and the following deposits only shall be guaranteed by this act: Time certificates not payable in less than six months from date and not extending for more than one year, bearing interest at not to exceed three per cent per annum and on which interest shall cease at maturity; savings accounts not exceeding in amount one hundred dollars to any one person and not subject to check, upon which the bank has reserved in writing the right to require sixty days' notice of withdrawal, and bearing interest at not to exceed three per cent per annum. Deposits which are primarily rediscounts or moneey borrowed by the bank, and all deposits otherwise secured, shall not be guaranteed by this act. Each guaranteed bank shall certify under oath to the Bank Commissioner at the date of each called statement the amount of money it has on deposit not eligible to guaranty under the provisions of this act, and in assessing such bank this amount shall be deducted from its total deposit. The guaranty as provided for in this act shall not apply to a bank's obligation as indorser upon bills rediscounted, nor to bills payable, nor to money borrowed temporarily from its correspondents or others.

SEC. 7. Each bank guaranteed by this act shall keep a correct record of the rate of interest paid or agreed to be paid to each depositor, and shall make a statement thereof under oath to the Bank Commissioner quarterly. If a bank displays a card or in any manner advertises that its depositors are guaranteed, such bank, if it pays or agrees to pay, either directly or indirectly, interest at any rate greater than three per cent per annum upon deposits of any kind, class or character, shall state upon or in the same card or advertisement that no deposits are guaranteed which bear a greater rate of interest per annum than three per cent; and this portion of the advertisement must be in type of the same size as that used in stating that the deposits of the bank are guaranteed. No bank which pays interest at a rate greater than three per cent per annum on any form of deposit, or pays any interest on savings deposits withdrawn before July 1st or January 1st next following the date of the deposit, or on any time certificate cashed before maturity, shall be permitted to participate in the benefits of this act;
39 *Provided, however,* That any existing contracts for higher rates of interest entered into before the passage of this act

may be carried out unimpaired, and such existing contracts shall not disqualify a bank to participate in the benefits of this act. Any managing officer of any bank guaranteed under this act, or any person acting in its behalf or for its benefit, who shall hereafter pay or promise to pay any depositor, either directly or indirectly, any rate of interest in excess of or in addition to the maximum rate of interest permitted by this act, or who shall, with intent to evade any of the provisions of this act, pledge the time certificate or other obligation of such bank as security for the personal obligation of himself or any other person, shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment. The display of any card or other advertisement tending to convey the impression that the deposits of the bank are guaranteed by the State of Kansas, either directly or indirectly, shall be a misdemeanor, and shall subject the offender to a fine of five hundred dollars; and any bank displaying a card or advertisement to the effect that its deposits are guaranteed by the bank depositors' guaranty fund of the State of Kansas, when not authorized so to do under the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than five hundred dollars nor more than one thousand dollars.

SEC. 8. Any trust company heretofore organized under the laws of this State, and now in operation, may reorganize as a State bank under the laws of this State by filing with the Secretary of State an amended charter signifying such purpose, to be approved by the Charter Board; and any private bank or national bank having the required capital and being otherwise qualified, may reorganize as a State bank; or any newly organized bank taking over the business of another bank, otherwise qualified, may immediately become a guaranteed bank by depositing bonds or money and paying its assessments and otherwise complying with the provisions of this act.

SEC. 9. A solvent bank, upon retiring from business and liquidating its affairs, shall be entitled to receive back from the State Treasurer, after all the depositors in such bank have been paid in full, its bonds or money pledged, but not any part of any unused assessment that may be in the bank depositors' guaranty fund: *Provided however*, That should such bank be turning over its business to another bank it shall not receive back its bonds or money, deposited in lieu thereof, until the bank receiving its business shall have deposited with the State Treasurer bonds, or money in lieu thereof, according to the requirements of this act.

SEC. 10. Banks may be permitted, in the discretion of the Bank Commissioner, to exchange their bonds for others acceptable under this act, or be allowed to deposit in lieu thereof an equal amount in cash, which may in turn be withdrawn upon the substitution of bonds acceptable under this act.

SEC. 11. If at any regular or special examination of a guaranteed bank it shall be found to be violating any of the provisions of this

act, the Bank Commissioner shall notify the bank, and the bank may be given thirty days in which to comply with the provisions of this act; and if at the expiration of this time such provisions have not been complied with the Bank Commissioner shall cancel its certificate of membership in the bank depositors' guaranty fund as herein provided, and forfeit its bonds deposited with the State Treasurer for the benefit of the bank depositors' guaranty fund.

SEC. 12. All bonds, and moneys deposited in lieu of bonds, placed in the State Treasury under this act, shall be kept in said treasury separate from all other bonds and moneys and to the credit of the bond account of the Bank depositors' guaranty fund, and shall be used for no other purpose. The State Treasurer shall cause the coupons upon the said bonds to be cut thirty days before maturity and sent or delivered to the bank which deposited them: *Provided, always,* That said bank shall have paid all assessments in full to date.

SEC. 13. After the passage of this act any National bank doing business in the State of Kansas, under the laws of the United States, after an examination at its expense by the State Bank Commissioner, and upon his approval as to its financial condition, may at its option participate in the assessments and benefits of the bank depositors' guaranty fund of the State of Kansas upon the same terms and conditions as apply to State banks: *Provided,* That such National Bank shall forward to the Bank Commissioner of the State of Kansas detailed reports, in form to be provided by him, of its condition on the dates of the usual called statements of State banks (such report not to be published except at the option of the bank), and shall submit to one examination each year by his department (or oftener in his discretion) as provided by the banking laws of the State of Kansas, and pay the usual fee therefor. Should a National bank disregard or refuse to comply with any recommendation made by the Bank Commissioner, in conformity with the provisions of this act, it shall immediately be subject to the provisions and penalties of this act and its certificate of membership in the bank depositors' guaranty fund shall be canceled.

SEC. 14. It shall be unlawful for any bank guaranteed under the provisions of this act to receive deposits continuously for six months in excess of ten times its paid-up capital and surplus, and the violation of this section by any bank shall cancel its rights to participate in the benefits of the bank depositors' guaranty fund, and work a forfeiture of its bonds deposited with the State Treasurer for the benefit of such fund.

41 SEC. 15. For the purpose of carrying into effect the provisions of this act the Bank Commissioner shall provide forms and make requisition on the State Printer for the necessary blanks, and all reports received by the Bank Commissioner shall be preserved by him in his office. The State Treasurer is authorized to provide forms and make requisition on the State Printer for the necessary blanks and record books for his office.

SEC. 16. All acts and parts of acts in conflict with this act are

hereby repealed in so far as they so conflict, but no provision of any banking law or other statute of this State shall be construed to be amended, modified or repealed, except in so far as necessary to permit the unrestricted operation of this act as applied to banks participating in the privileges of this act.

SEC. 17. This act shall take effect and be in force from and after June 30, 1909, and its publication in the official State paper.

Approved March 6, 1909.

Endorsed: No. 8817. In the Circuit Court of United States, Dist. of Kansas, 1st Div. Abilene National Bank et al., complainants, vs. Joseph N. Dolley, Bank Commissioner, et al., Defendant-. Bill of Complaint. Filed this 14th day of September, 1909. Geo. F. Sharitt, clerk. Gleed, Hunt, Palmer & Gleed.

42 In the Circuit Court of the United States for the District of Kansas, First Division.

No. 8817.

ABILENE NATIONAL BANK OF ABILENE (and Forty-six Other State Banks), Complainants,

vs.

J. N. DOLLEY, as Bank Commissioner of the State of Kansas, and MARK TULLEY, as State Treasurer of the State of Kansas, Defendants.

Demurrer.

The demurrer of the above named defendants, J. N. Dolley, Bank Commissioner, and Mark Tulley, as State Treasurer, to the bill of the complainants; The defendants by protestation not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, jointly demur to the said bill and for causes of demurrer show:

I.

That the said plaintiffs have not shown by said bill that they or either of them have any right or interest in the subject of the suit. the relief demanded, or the controversy attempted to be alleged which would entitle them or either of them to the relief prayed for therein.

II.

That enough does not appear upon the face of the bill to show the court's jurisdiction of the suit in consequence of the amount involved exceeding the sum of two thousand (2,000) dollars exclusive of interest and costs, and said bill does not affirmatively show that either of said complainants have an interest amounting to the

sum of two thousand (2,000) dollars exclusive of interest
43 and costs therein, because said bill affirmatively shows that neither of the said complainants has an interest in the alleged controversy exceeding the said sum of two thousand (2,000) dollars exclusive of interest and costs.

That it appeareth by the plaintiffs' own showing in the said bill that they and each of them are not entitled to any relief in the bill against these defendants or any of them alleged and for divers good causes of demurrer which appear on the said bill these defendants do demur to, and they pray judgment of the court whether they or any of them shall be compelled to make any answer to the said bill and they humbly pray to be dismissed with their reasonable costs in their behalf sustained.

C. H. BUCKMAN &
A. C. MITCHELL,
F. S. JACKSON,
Solicitors — of Counsel for Defendants, J. N. Dolley, and Mark Tulley.

Certificate of Counsel.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law and it is not interposed for delay, and that the same is true in point of fact.

G. H. BUCKMAN,
A. C. MITCHELL,
F. S. JACKSON,
Solicitors for Defendants.

Endorsed: No. 8817. Abilene Nat'l B'k et al. vs. J. N. Dolley et al. Demurrer to Bill. Filed Sept. 29, 1909. Geo. F. Sharitt, clerk.

44 In the Circuit Court of the United States for the District of Kansas, First Division.

No. 8817.

ABILENE NATIONAL BANK OF ABILENE et al., Complainants,
vs.
J. N. DOLLEY, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, Defendants.

Decree.

Now on this 31st day of October, 1910, this cause comes on to be heard upon the application of said complainants for an order setting down for hearing the exceptions of said complainants to the answer of said defendants; and the court, having examined the record herein and the mandate and opinion of the United States Circuit Court of Appeals of the Eighth Judicial Circuit, issued and rendered by said

court upon the appeal of said defendants from the order of this court granting temporary injunction herein, it is by the court

Ordered, adjudged and decreed that the order entered by this court herein on the 24th day of December, 1909, overruling and denying the demurrer of said defendants to the bill of complaint of the complainants herein be, and the same is, hereby vacated and set aside, and it is further by the court

Ordered, adjudged and decreed that said demurrer be and the same is hereby sustained and allowed.

And thereupon said complainants and each of them elected to stand upon said bill and refused to amend said bill or to plead further, and it is therefore by the court

Ordered, adjudged and decreed that said bill be and the same is hereby dismissed and that said defendants recover their costs
45 in this action, taxed at — dollars, for which let execution issue.

And thereupon counsel for said complainant in open court gave oral notice of appeal from said order and decree to the United States Supreme Court, which notice is here and now entered of record herein.

JOHN C. POLLOCK, *Judge.*

Endorsed: No. 8817. Circuit Court of U. S. District of Kansas. Abilene National Bank of Abilene et al. vs. J. N. Dolley as Bank Commissioner et al. Decree. Filed Oct. 31, 1910. Geo. F. Sharitt. Clerk.

46 In the Circuit Court of the United States for the District of Kansas, First Division.

No. 8817.

ABILENE NATIONAL BANK OF ABILENE et al., Complainants,
vs.
JOSEPH N. DOLLEY, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, Defendants.

Præcipe.

The Clerk of said court will please prepare a transcript for appeal in the above entitled cause and include therein Bill, Demurrer of Defendants, Decree dismissing Bill, Assignment of Errors, Petition for Appeal and Order allowing the same, Bond on Appeal and this Præcipe.

JOHN L. WEBSTER,
B. P. WAGGENER,
J. W. GLEED,
JOHN L. HUNT,
Solicitors for Complainants.

Topeka, Kansas, Nov. 3rd, 1910.

Endorsed: 8817. Abilene National Bank of Abilene, et al. vs. Joseph N. Dolley as Bank Commissioner, et al. Præcipe for transcript. Filed Nov. 3, 1910. Geo. F. Sharitt, clerk.

47 · In the Circuit Court of the United States for the District of Kansas, First Division.

ABILENE NATIONAL BANK, OF ABILENE; FARMERS NATIONAL BANK, of Abilene; Alma National Bank, of Alma; Citizens National Bank, of Anthony; Home National Bank, of Arkansas City; First National Bank of Atchison, First National Bank of Augusta, First National Bank of Barnard, Baxter National Bank, of Baxter Springs; National Bank of Belleville, of Belleville; Peoples National Bank of Burlington, First National Bank of Bonner Springs, Jewell County National Bank of Burr Oak, Caney Valley National Bank of Caney, Home National Bank of Caney, Cedarvale National Bank, of Cedarvale; First National Bank of Chanute, First National Bank of Cherokee, Montgomery County National Bank, of Cherryvale; First National Bank of Coffeyville; Condon National Bank, of Coffeyville; Coldwater National Bank, of Coldwater; First National Bank of Concordia; Chase County National Bank, of Cottonwood Falls; First National Bank of Delphos; National Bank of Commerce, of Dodge City; First National Bank of Edna; El Dorado National Bank, of El Dorado; Farmers & Merchants National Bank, of El Dorado; Central National Bank, of Ellsworth; Citizens National Bank, of Emporia; First National Bank, of Englewood; Citizens National Bank, of Eureka; First National Bank, of Eureka; Home National Bank, of Eureka; Army National Bank, of Leavenworth; Citizens National Bank, of Fort Scott; Galena National Bank, of Galena; First National Bank of Garden City; Garden City National Bank, of Garden City; National Bank of Commerce, of Garnett; First National Bank of Gaylord, First National Bank of Girard, First National Bank of Glasco, First National Bank of Goffs, First National Bank of Goodland; Citizens National Bank, of Great Bend; First National Bank of Great Bend, First National Bank of Hamilton; National Bank of Harper, of Harper; Security National Bank, of Harper; Hartford National Bank, of Hartford; First National Bank of Havensville, First National Bank of Hiawatha, First National Bank of Highland, First National Bank of Hillsboro, First National Bank of Hoisington, First National Bank of Holton; Howard National Bank, of Howard; Citizens National Bank, of Independence; First National Bank of Independence; Northrup National Bank, of Iola; First National Bank of Junction City; Central National Bank, of Junction City; Inter-State National Bank, of Kansas City; Peoples National Bank, of Kansas City; First National Bank of Kingman, First National Bank of La Harpe; Moffett Bros. National Bank, of Larned; Lawrence National Bank, of Lawrence; First National Bank, of Leavenworth; Leavenworth National Bank, of Leavenworth; First National Bank of Lebanon, First National Bank of Leroy, First National Bank of Liberal; Farmers National Bank, of Lincoln; First National Bank of Lindsborg, First National Bank of Logan, First National Bank of Lucas, First National Bank of Lyndon; Lyons National Bank, of Lyons;

First National Bank of Madison; Union National Bank of Manhattan; Mankato National Bank, of Mankato; First National Bank of Marysville; Moline National Bank, of Moline; First National Bank of Mound Valley, First National Bank of Mount Hope; Citizens National Bank, of Ness City; First National Bank of Newton, First National Bank of Norton, First National Bank of Nortonville; Oberlin National Bank, of Oberlin; First National Bank, of Olathe; Farmers National Bank, of Osborne; First National Bank of Osborne; Peoples National Bank, of Ottawa; First National Bank, of Overbrook; First National Bank, of Parsons; National Bank of Commerce, of Pittsburg; National Bank of Pittsburg, of Pittsburg; First National Bank, of Plainville; Farmers National Bank, of Salina; National Bank of America, of Salina; First National Bank, of Scott; Peoples National Bank, of Sedan; First National Bank of Sedan, First National Bank, of Smith Center, First National Bank of St. John; St. John National Bank, of St. John; First National Bank, of St. Marys; National Bank of St. Marys, of St. Marys; Farmers National Bank, of Stafford; First National Bank of Sterling; National State Bank, of Stockton; Stockton National Bank, of Stockton; First National Bank of Syracuse, First National Bank of Thayer, First National Bank of Toronto, First National Bank of Troy, First National Bank of Wamego, First National Bank of Washington, First National Bank of Waverly; National Bank of Commerce, of Wellington; Wellington National Bank, of Wellington; First National Bank of Wetmore, First National Bank of White City; Fourth National Bank, of Wichita; Kansas National Bank, of Wichita; National Bank of Commerce, of Wichita; Cowley County National
48 Bank, of Winfield; First National Bank of Winfield; Winfield National Bank, of Winfield; Merchants National Bank, of Lawrence; Washington National Bank, of Washington; Manufacturers National Bank, of Leavenworth; First National Bank of Formosa, First National Bank of Kensington, First National Bank of Jewell City; Merchants Bank, of Topeka; First National Bank of Prairie View, First National Bank of Elk City, Complainants,

vs.

JOSEPH N. DOLLEY, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, Defendants.

Petition for Allowance of Appeal.

The Complainants Abilene National Bank, of Abilene, Farmers National Bank, of Abilene, Alma National Bank of Alma, Citizens National Bank, of Anthony, Home National Bank, of Arkansas City, First National Bank, of Atchison, First National Bank, of Augusta, First National Bank, of Barnard, Baxter National Bank, of Baxter Springs, National Bank of Belleville, of Belleville, Peoples National Bank, of Burlington, First National Bank, of Bonner Springs, Jewell County National Bank, of Burr Oak, Caney Valley National Bank, of Caney, Home National Bank, of Caney, Cedarvale Na-

tional Bank, of Cedarvale, First National Bank, of Chanute, First National Bank, of Cherokee, Montgomery County National Bank, of Cherryvale, First National Bank, of Coffeyville, Condon National Bank, of Coffeyville, Coldwater National Bank, of Coldwater, First National Bank, of Concordia, Chase County National Bank, of Cottonwood Falls, First National Bank, of Delphos, National Bank of Commerce, of Dodge City, First National Bank, of Edna, El Dorado National Bank, of El Dorado, Farmers & Merchants National Bank, of El Dorado, Central National Bank, of Ellsworth, Citizens National Bank, of Emporia, First National Bank, of Englewood, Citizens National Bank, of Eureka, First National Bank, of Eureka, Home National Bank, of Eureka, Army National Bank, of Leavenworth, Citizens National Bank, of Fort Scott, Galena National Bank, of Galena, First National Bank, of Garden City, Garden City National Bank, of Garden City, National Bank of Commerce, of Garnett, First National Bank, of Gaylord, First National Bank, of Girard, First National Bank, of Glasco, First National Bank, of Goffs, First National Bank, of Goodland, Citizens National Bank, of Great Bend, First National Bank, of Great Bend, First National Bank, of Hamilton, National Bank of Harper, of Harper, Security National Bank, of Harper, Hartford National Bank, of Hartford, First National Bank, of Havensville, First National Bank, of Hiawatha, First National Bank, of Highland, First National Bank, of Hillsboro, First National Bank, of Hoisington, First National Bank, of Holton, Howard National Bank, of Howard, Citizens National Bank, of Independence, First National Bank, of Independence, Northrup National Bank, of Iola, First National Bank, of Junction City, Central National Bank, of Junction City, Inter-State National Bank, of Kansas City, Peoples National Bank, of Kansas City, First National Bank, of Kingman, First National Bank, of La Harpe, Moffett Bros. National Bank, of Larned, Lawrence National Bank, of Lawrence, First National Bank, of Leavenworth, Leavenworth National Bank, of Leavenworth, First National Bank, of Lebanon, First National Bank, of Leroy, First National Bank, of Liberal Farmers National Bank, of Lincoln, First National Bank, of Lindsborg, First National Bank, of Logan, First National Bank, of Lucas, First National Bank, of Lyndon, Lyons National Bank, of Lyons, First National Bank, of Madison, Union National Bank, of Manhattan, Mankato National Bank, of Mankato, First National Bank, of Marysville, Moline National Bank, of Moline, First National Bank, of Mound Valley, First National Bank, of Mount Hope, Citizens National Bank, of Ness City, First National Bank, of Newton, First National Bank, of Norton, First National Bank, of Nortonville, Oberlin National Bank, of Oberlin, First National Bank, of Olathe, Farmers National Bank, of Osborne, First National Bank, of Osborne, Peoples National Bank, of Ottawa, First National Bank, of Overbrook, First National Bank, of Parsons, National Bank of Commerce, of Pittsburg, National Bank of Pittsburg, of Pittsburg, First National Bank, of Plainville, Farmers National Bank, of Salina, National Bank of America, of Salina, First Na-

tional Bank, of Scott, Peoples National Bank, of Sedan, First National Bank, of Sedan, First National Bank, of Smith
49 Center, First National Bank, of St. John, St. John National Bank, of St. John, First National Bank, of St. Marys, National Bank of St. Marys, of St. Marys Farmers National Bank, of Stafford, First National Bank, of Sterling, National State Bank, of Stockton, Stockton National Bank, of Stockton, First National Bank, of Syracuse, First National Bank, of Thayer, First National Bank, of Toronto, First National Bank, of Troy, First National Bank, of Wamego, First National Bank, of Washington, First National Bank, of Waverly, National Bank of Commerce, of Wellington, Wellington National Bank, of Wellington, First National Bank, of Wetmore, First National Bank, of White City, Fourth National Bank, of Wichita, Kansas National Bank, of Wichita, National Bank of Commerce, of Wichita, Cowley County National Bank, of Winfield, First National Bank, of Winfield, Winfield National Bank, of Winfield, Merchants National Bank, of Lawrence, Washington National Bank, of Washington, Manufacturers National Bank, of Leavenworth, First National Bank of Formosa, First National Bank of Kensington, First National Bank of Jewell City, Merchants National Bank, of Topeka, First National Bank, of Prairie View, First National Bank, of Elk City, in the above entitled cause, feeling aggrieved by the order and decree of the court, entered on the 31st day of October, 1910, in the above entitled cause, pray for an order allowing an appeal from the said order and decree to the Supreme Court of the United States, and that an order be made fixing the amount of security which the complainants shall be required to furnish as a cost bond upon said appeal.

CHESTER I. LONG,
J. W. GLEED,
JOHN L. HUNT,
Solicitors for Complainants.

JOHN LEE WEBSTER,
B. P. WAGGENER,
Of Counsel.

Order Allowing Appeal.

It is ordered that the appeal as prayed by the complainants to the Supreme Court of the United States is hereby allowed and the cost bond is hereby fixed at $500.00.

JOHN C. POLLOCK, *Judge.*

Endorsed: No. 8817. In the Circuit Court of the United States for the District of Kansas, First Division. Abilene National Bank of Abilene, et al., Complainants vs. Joseph N. Dolley, as Bank Commissioner of the State of Kansas, and Mark Tulley as State Treasurer of the State of Kansas, Defendants. Petition for Allowance of Appeal. Filed Nov. 7, 1910. Geo. F. Sharitt, clerk. John Lee Webster, B. P. Waggener, Chester I. Long, J. W. Gleed, John L. Hunt, Solicitors for Complainants.

50 **In the Circuit Court of the United States for the District of Kansas, First Division.**

ABILENE NATIONAL BANK OF ABILENE, et al., Complainants,
vs.
JOSEPH N. DOLLEY, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, Defendants.

Assignment of Errors.

Comes now the above named complainants, Abilene National Bank, of Abilene, Farmers National Bank, of Abilene, Alma National Bank, of Alma, Citizens National Bank, of Anthony, Home National Bank, of Arkansas City, First National Bank, of Atchison, First National Bank, of Augusta, First National Bank, of Barnard, Baxter National Bank, of Baxter Springs, National Bank of Belleville, of Belleville, Peoples National Bank, of Burlington, First National Bank, of Bonner Springs, Jewell County National Bank, of Burr Oak, Caney Valley National Bank, of Caney, Home National Bank, of Caney, Cedarvale National Bank, of Cedarvale, First National Bank, of Chanute, First National Bank, of Cherokee, Montgomery County National Bank, of Cherryvale, First National Bank, of Coffeyville, Condon National Bank, of Coffeyville, Coldwater National Bank, of Coldwater, First National Bank, of Concordia, Chase County National Bank, of Cottonwood Falls, First National Bank, of Delphos, National Bank of Commerce, of Dodge City, First National Bank, of Edna, El Dorado National Bank, of El Dorado, Farmers & Merchants National Bank, of El Dorado, Central National Bank of Ellsworth, Citizens National Bank, of Emporia, First National Bank, of Englewood, Citizens National Bank, of Eureka, First National Bank, of Eureka, Home National Bank, of Eureka, Army National Bank, of Leavenworth, Citizens National Bank, of Fort Scott, Galena National National Bank, of Galena, First National Bank, of Garden City, Garden City National Bank, of Garden City, National Bank of Commerce, of Garnett, First National Bank, of Gaylord, First National Bank, of Girard, First National Bank, of Glasco, First National Bank, of Goffs, First National Bank, of Goodland, Citizens National Bank, of Great Bend, First National Bank, of Great Bend, First National Bank, of Hamilton, National Bank of Harper, of Harper, Security National Bank, of Harper, Hartford National Bank, of Hartford, First National Bank, of Havensville, First National Bank, of Hiawatha, First National Bank, of Highland, First National Bank, of Hillsboro, First National Bank, of Hoisington, First National Bank, of Holton, Howard National Bank, of Howard, Citizens National Bank, of Independence, First National Bank, of Independence, Northrup National Bank, of Iola, First National Bank, of Junction City, Central National Bank, of Junction City, Inter-State National Bank, of Kansas City,
51 Peoples National Bank, of Kansas City, First National Bank, of Kingan, First National Bank, of La Harpe, Moffett Bros.

National Bank, of Larned, Lawrence National Bank, of Lawrence, First National Bank, of Leavenworth, Leavenworth National Bank, of Leavenworth, First National Bank, of Lebanon, First National Bank, of Leroy, First National Bank, of Liberal, Farmers National Bank, of Lincoln, First National Bank, of Lindsborg, First National Bank, of Logan, First National Bank, of Lucus, First National Bank, of Lyndon, Lyons National Bank, of Lyons, First National Bank, of Madison, Union National Bank, of Manhattan, Mankato National Bank, of Mankato, First National Bank, of Marysville, Moline National Bank, of Moline, First National Bank, of Mound Valley, First National Bank, of Mount Hope, Citizens National Bank, of Ness City, First National Bank, of Newton, First National Bank, of Norton, First National Bank, of Nortonville, Oberlin National Bank, of Oberlin, First National Bank, of Olathe, Farmers National Bank, of Osborne, First National Bank, of Osborne, Peoples National Bank, of Ottawa, First National Bank, of Overbrook, First National Bank, of Parsons, National Bank of Commerce, of Pittsburg, National Bank of Pittsburg, of Pittsburg, First National Bank, of Plainville, Farmers National Bank, of Salina, National Bank of America, of Salina, First National Bank, of Scott, Peoples National Bank, of Sedan, First National Bank, of Sedan, First National Bank, of Smith Center, First National Bank, of St. John, St. John National Bank, of St. John, First National Bank, of St. Marys, National Bank of St. Marys, of St. Marys, Farmers National Bank, of Stafford, First National Bank, of Sterling, National State Bank, of Stockton, Stockton National Bank, of Stockton, First National Bank, of Syracuse, First National Bank, of Thayer, First National Bank, of Toronto, First National Bank, of Troy, First National Bank, of Wamego, First National Bank, of Washington, First National Bank, of Waverly, National Bank of Commerce, of Wellington, Wellington National Bank, of Wellington, First National Bank, of Wetmore, First National Bank, of White City, Fourth National Bank, of Wichita, Kansas National Bank, of Wichita, National Bank of Commerce, of Wichita, Cowley County National Bank, of Winfield, First National Bank, of Winfield, Winfield National Bank, of Winfield, Merchants National Bank, of Lawrence, Washington National Bank, of Washington, Manufactures National Bank, of Leavenworth, First National Bank, of Formosa, First National Bank of Kensington
First National Bank of Jewell City, Merchants National Bank, of Topeka, First National Bank, of Prairie View, First National
52 Bank, of Elk City, Complainants, and file the following assignments of errors:

First. That the court erred in entering its order and decree sustaining the demurrer of the defendants to the complainants' bill of complaint.

Second. That the court erred in ruling that the complainants' bill of complaint did not state a cause of action and in entering its order and decree dismissing the complainants' bill of complaint.

Third. That the court should have found that Chapter 61 of the Laws of 1909 of the State of Kansas, commonly known as the Bank Guaranty Deposit Act of the State of Kansas, unjustly and unlaw-

fully discriminates against each and all of the National Banks in the State of Kansas, including the complainants herein, and deprived each and all of said National Banks, including the complainants herein, of property without due process of law, and was and is as to each of the complainant banks in violation of the National Banking Act of the United States and in violation of Section 1 of Article 14 of Amendments to the Constitution of the United States which provides that no state shall make or enforce any law which denies to any person within its jurisdiction the equal protection of the laws, and in violation of Section 10 of Article 1 of the Constitution of the United States which prohibits any state passing a law impairing the obligation of contracts, and by reason of the premises that Chapter 61 of the Laws of 1909 of the State of Kansas, commonly known as the Bank Guaranty Deposit Act, is unconstitutional, null and void, and that its enforcement would result in irreparable damage and injury to the complainants and to each of them and to all of the National Banks of the State of Kansas similarly situated and accordingly should be enjoined.

CHESTER I. LONG,
JAMES WILLIS GLEED,
JOHN L. HUNT,
Solicitors for Complainants.

JOHN LEE WEBSTER,
B. P. WAGGENER,
Of Counsel.

53 Endorsed: No. 8817. In the Circuit Court of the United States for the District of Kansas, First Division. Abilene National Bank, of Abilene et al., Complainants, vs. Joseph N. Dolley as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, Defendants. Assignment of Errors. Filed Nov. 7, 1910, Geo. F. Sharitt, clerk. John Lee Webster, B. P. Waggener, Chester I. Long, J. W. Gleed, John L. Hunt, Solicitors for complainants.

54 In the Circuit Court of the United States for the District of Kansas, First Division.

ABILENE NATIONAL BANK OF ABILENE et al., Complainants,
vs.
JOSEPH N. DOLLEY, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, Defendants.

Bond on Appeal.

Know all men by these presents that we, Abilene National Bank, of Abilene, Farmers National Bank, of Abilene, Alma National Bank, of Alma, Citizens National Bank, of Anthony, Home National Bank, of Arkansas City, First National Bank, of Atchison, First National Bank, of Augusta, First National Bank, of Barnard, Baxter National Bank, of Baxter Springs, National Bank of Belleville, of

Belleville, Peoples National Bank, of Burlington, First National Bank, of Bonner Springs, Jewell County National Bank, of Burr Oak, Caney Valley National Bank, of Caney, Home National Bank, of Caney, Cedarvale National Bank, of Cedarvale, First National Bank, of Chanute, First National Bank, of Cherokee, Montgomery County National Bank, of Cherryvale, First National Bank, of Coffeyville, Condon National Bank, of Coffeyville, Coldwater National Bank, of Coldwater, First National Bank, of Concordia, Chase County National Bank, of Cottonwood Falls, First National Bank, of Delphos, National Bank of Commerce, of Dodge City, First National Bank, of Edna, El Dorado National Bank, of El Dorado, Farmers & Merchants National Bank, of El Dorado, Central National Bank, of Ellsworth, Citizens National Bank, of Emporia, First National Bank of Englewood, Citizens National Bank, of Eureke, First National Bank, of Eureka, Home National Bank, of Eureka, Army National Bank, of Leavenworth, Citizens National Bank, of Fort Scott, Galena National Bank, of Galena, First National Bank, of Garden City, Garden City National Bank, of Garden City, National Bank of Commerce, of Garnett, First National Bank, of Gaylord, First National Bank, of Girard, First National Bank, of Glasco, First National Bank, of Goffs, First National Bank, of Goodland, Citizens National Bank, of Great Bend, First National Bank, of Great Bend, First National Bank, of Hamilton, National Bank of Harper, of Harper, Security National Bank, of Harper, Hartford National Bank, of Hartford, First National Bank, of Havensville, First National Bank, of Hiawatha, First National Bank, of Highland, First National Bank, of Hillsboro, First National Bank, of Hoisington, First National Bank, of Holton, Howard National Bank, of Howard, Citizens National Bank, of Independence, First National Bank, of Independence, Northrup National Bank, of Iola, First National Bank, of Junction City, Central National Bank, of Junction City, Inter-State National Bank, of Kansas City, Peoples National Bank, of Kansas City, First National Bank, of Kingman, First National Bank, of La Harpe, Moffett Bros. National Bank, of Larned, Lawrence National Bank, of Lawrence, First National Bank, of Leavenworth, Leavenworth National Bank, of Leavenworth, First National Bank, of Lebanon, First National Bank, of Leroy, First National Bank, of Liberal, Farmers National Bank, of Lincoln, First National Bank, of Lindsborg, First National Bank, of Logan, First National Bank, of Lucus, First National Bank, of Lyndon, Lyons National Bank, of Lyons, First National Bank, of Madison, Union National Bank, of Manhattan, Mankato National Bank, of Mankato, First National Bank, of Marysville, Moline National Bank, of Moline, First National Bank, of Mound Valley, First National Bank, of Mount Hope, Citizens National Bank, of Ness City, First National Bank, of Newton, First National Bank, of Norton, First National Bank, of Nortonville, Oberlin National Bank, of Oberlin, First National Bank, of Olathe, Farmers National Bank, of Osborne, First National Bank, of Osborne, Peoples National Bank of Ottawa, First National Bank, of Overbrook, First National Bank, of Parsons, National Bank of Commerce, of Pittsburg, National Bank of Pitts-

burg, of Pittsburg, First National Bank, of Plainville, Farmers National Bank, of Salina, National Bank of America, of Salina, First National Bank, of Scott, Peoples National Bank, of Sedan, First National Bank, of Sedan, First National Bank, of Smith Center, First National Bank, of St. John, St. John National Bank, of St. John, First National Bank, of St. Marys, National Bank of St. Marys, of St. Marys, Farmers National Bank, of Stafford, First National Bank, of Sterling, National State Bank, of Stockton, Stockton National Bank, of Stockton, First National Bank, of Syracuse, First National Bank, of Thayer, First National Bank, of Toronto, First National Bank, of Troy, First National Bank, of Wamego, First National Bank, of Washington, First National Bank, of Waverly, National Bank of Commerce, of Wellington, Wellington National Bank, of Wellington, First National Bank, of Wetmore, First National Bank, of White City, Fourth National Bank, of Wichita, Kansas National Bank, of Wichita, National Bank of Commerce, of Wichita, Cowley County National Bank, of Winfield, First National Bank, of Winfield, Winfield National Bank, of Winfield, Merchants National Bank, of Lawrence, Washington National Bank, of Washington, Manufacturers National Bank, of Leavenworth, First National Bank of Formosa, First National Bank of Kensington, First National Bank of Jewell City, Merchants National Bank, of Topeka, First National Bank, of Prairie View, First National Bank, of Elk City, as principals, and J. R. Burrow and George A. Guild as surety, are held and firmly bound unto the defendants, Joseph N. Dolley, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, in the sum of Five Hundred Dollars to be paid to the defendants subject to the following conditions:

Whereas the complainants in the above entitled cause have sued out an appeal to the Supreme Court of the United States to reverse the order and decree entered in the United States Circuit Court for the District of Kansas, on the 31st day of October, 1910.

Now therefore, the condition of this obligation is such that if the said complainants shall prosecute said appeal to effect, and answer all costs if they fail to make said appeal good, then this obligation shall be void, otherwise to remain in full force and effect.

JOHN LEE WEBSTER,
JOHN L. HUNT,
J. W. GLEED,
Solicitors for Complainants.

56

J. R. BURROW,
GEO. A. GUILD, *Surety.*

Approved,
JOHN C. POLLOCK, *Judge.*

Endorsed: No. 8817. In the Circuit Court of the United States for the District of Kansas, First Division. Abilene National Bank, of Abilene et al., Complainants vs. Joseph N. Dolley, as Bank Com-

missioner of the State of Kansas, and Mark Tulley as State Treasurer of the State of Kansas, Defendants. Bond on Appeal. Filed Nov. 7, 1910. Geo. F. Sharitt, clerk. John Lee Webster, J. W. Gleed, John L. Hunt, Solicitors for Complainants.

57 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, Geo. F. Sharitt, Clerk of the Circuit Court of the United States of America, for the District of Kansas, do hereby certify the foregoing to be a true, full and correct copy of Bill of Complaint; Demurrer to Bill of Complaint; Decree dismissing Bill of Complaint; Præcipe for transcript of record; Petition for Appeal and allowance thereof; Assignment of Errors and Bond on Appeal in Case No. 8817 wherein Abilene National Bank of Abilene, et al. are complainants and Josepha N. Dolley, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas, are defendants.

I further certify that the Original Citation is hereto attached and returned herewith.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at my office in Topeka, in said District of Kansas, this 7th day of November, A. D. 1910.

[The Seal of the Circuit Court of the United States, District of Kansas, 1862.]

GEO. F. SHARITT, *Clerk.*

Endorsed on cover: File No. 22,413. Kansas C. C. U. S. Term No. 792. Abilene National Bank of Abilene et al., appellants, vs. Joseph N. Dolley, as Bank Commissioner of the State of Kansas, and Mark Tulley, as State Treasurer of the State of Kansas. Filed November 22d, 1910. File No. 22,413.

SUPREME COURT OF UNITED STATES.

ABILENE NATIONAL BANK OF ABILENE, ET AL., APPELLANTS,

vs.

JOSEPH N. DOLLEY, AS BANK COMMISSIONER OF THE STATE OF KANSAS, AND MARK TULLEY, AS STATE TREASURER OF THE STATE OF KANSAS.

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SUPREME COURT OF THE UNITED STATES.

ABILENE NATIONAL BANK OF ABILENE, ET AL., APPELLANTS,

vs.

JOSEPH N. DOLLEY, AS BANK COMMISSIONER OF THE STATE OF KANSAS, AND MARK TULLEY, AS STATE TREASURER OF THE STATE OF KANSAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

BRIEF FOR APPELLANTS.

I.

STATEMENT.

One hundred and fifty banks domiciled and doing business in Kansas, filed their bill in the United States Circuit Court for the District of Kansas, against the Bank Commissioner and the Treasurer of Kansas, to enjoin them from enforcing against the plaintiffs a statute of the State of Kansas approved March 6th, 1909, commonly known as the "Bank Depositors' Guaranty Act" (Laws 1909, Ch. 61).

The case was heard upon the bill of complainants and demurrer of defendants (rec. p. 30), and the Circuit Court granted a temporary injunction, whereupon the

defendants sued out an appeal to U. S. Circuit Court of Appeals, Eighth Circuit, which held that the temporary injunction was improvidently granted *(Dolley v. Abilene National Bank,* 179 Fed. 461). The Circuit Court entered a decree as per the direction and opinion of the Court of Appeals, and dismissed complainants' bill of complaint, whereupon complainants sued out their appeal to this court, which was filed November 22, 1910.

II.

A SUMMARY OF THE KANSAS BANK GUARANTY LAW.

Prior to the enactment of the Bank Guaranty Act there existed in Kansas a general Banking Act (see Banking Act of March 11, 1897, and amendments thereto), which Act *still remains in force* except in so far as the same is in conflict with, or repealed by implication by the Bank Guaranty Act of 1909. In said general banking laws it is provided in case of insolvency of any bank, that all the moneys arising from the assets of such bank, including what may be realized from the stockholders, shall be paid to the *creditors* of the bank without discrimination or preference. National banks made deposits with, and gave credit to State banks and under the laws in force they were to share, without discrimination or preference, in the assets of a bank in case it should become insolvent.

March 6, 1909, the Legislature of the State of Kansas passed an act entitled "An Act providing for the security of depositors in the incorporated banks of Kansas, creating the Bank Depositors' Guaranty Fund of the State of Kansas, and providing regulations therefor, and

penalties for the violation thereof," which act is Chapter 61 of the Session Laws of Kansas of 1909. (Ex. A rec. pp. 23-30.)

1. The distinctive and important features of said act may be enumerated as follows: Section 1 of said act limits the privileges of the guaranty fund feature to "incorporated" State banks. By Section 8 of said act it is provided that *National* banks may participate in the bank guaranty fund feature if they shall "reorganize as a State bank." By Section 13 it is provided that National banks may participate in the guaranty feature, but under conditions that are impossible.

2. By Section 2 it is provided that banks accepting the guaranty feature shall deposit with the State Treasurer, subject to the order of the Bank Commissioner, United States or other bonds to the amount of $500 for every $100,000 of its average deposits eligible to guaranty (less its capital and surplus), or in lieu of bonds may deposit money in an equal amount. In addition to said deposit of bonds, or money, "each bank shall pay in cash an amount equal to one-twentieth of one per cent of its average deposits eligible to guaranty, less its capital and surplus, and the same shall be credited to the bank depositors' guaranty fund with the State Treasurer," subject to the order of the Commissioner.

3. By Section 3 the Bank Commissioner, during the month of January in each year, shall make an assessment of one-twentieth of one per cent on the average guaranteed deposits, less capital and surplus of each bank, until the cash fund accumulated shall approximate $500,000 over and above the cash deposited in lieu of bonds. Said section provides for additional assessments from year to year, and the funds so raised shall be held by the State

Treasurer subject to the order of the Bank Commissioner for the payment of so-called guaranteed depositors.

4. By Section 4 it is provided that in case of insolvency the Bank Commissioner shall take possession of and wind up such bank, and issue to *depositors* "a certificate upon proof of claim bearing six per cent interest per annum upon which dividends shall be entered when paid, except where a contract rate exists on the deposit, in which case the certificate shall bear interest at the contract rate."

5. By Section 4 it is further provided that the Commissioner shall *first pay* to these *depositors* on these certificates *all* the moneys realized from the assets of the said bank and from the double liability of its stockholders, and shall draw checks upon the State Treasurer, payable out of the guaranty fund, for the balance due upon each claim as shown by the said certificate.

6. By Section 6 of said guaranty act the *depositors* whose claims are guaranteed and paid in full to the exclusion of *creditors,* are limited as follows:

(a) Deposits which do not bear interest;
(b) Time certificates not payable in less than six months from date and not extending more than one year, bearing interest not exceeding three per cent and on which interest shall cease at maturity;
(c) Savings accounts not exceeding in amount $100 to any one person and not subject to check, and upon which the bank has reserved in writing the right to require sixty days' notice of withdrawal, and bearing interest not to exceed three per cent.

7. By Section 6 certain depositors are expressly excluded from the guaranty protection, to-wit:

(a) *Deposits* which are primarily *rediscounts* or *money borrowed* by the bank, and all deposits

otherwise secured, shall not be guaranteed by this act.

(b) The guaranty as provided for in this act shall not apply to a *bank's* obligation as *indorser* upon bills *rediscounted,* nor to *bills payable,* nor to money *borrowed* temporarily from its *correspondents* or others.

8. By implication other deposits are excluded from the guaranty feature as follows:

(a) Private deposits on which the bank agrees to pay interest.
(b) Time certificates payable in less than six months.
(c) Certificates running for more than one year.
(d) Time certificates bearing interest for more than three per cent per annum.
(e) Savings accounts exceeding $100 to any one person.
(f) Savings accounts upon which the bank has not reserved in writing the right to require 60 days' notice of withdrawal.
(g) Savings accounts which draw interest exceeding three per cent per annum.

9. National banks are intended to be and are *expressly prohibited* from having the benefits of the act. This is so because Section 1 of the act only permits incorporated State banks to become guaranteed banks. By Section 8, trust companies, private banks and *National banks* are specifically by name *excluded* unless they *reorganize as State banks.* This situation is not relieved by Section 13 because National banks cannot, and it must be presumed that the Legislature of Kansas knew that they could not, accept of the terms and conditions of the statute, for to do so would make them to all intents and purposes State banks and would cause them to forfeit their charters as National banks.

10. *National banks cannot become guaranteed banks*

under the law for want of corporate power so to do, and as depositors, creditors and correspondents of State banks are unlawfully discriminated against. In no manner or form are they entitled to share in the assets of an insolvent State bank until after its guaranteed depositors are first paid in full, even though such payment to guaranteed depositors shall exhaust all of the assets of the bank to the exclusion of National banks as creditors from any share of the assets of the insolvent State bank.

III.

PRINCIPAL MATERIAL AVERMENTS IN THE BILL OF COMPLAINT.

In paragraph III of the bill of complaint it is averred that it is provided in Section 28 of the General Banking Act of the State of Kansas, that in case of insolvency of a State bank all of its assets shall be paid to the *creditors* of the bank without discrimination or preference between such creditors, and (rec. p. 6, folio 11):

> "That complainant banks, relying upon said laws, and acting in good faith thereunder, *have made deposits with State banks* and have *given credit* to State banks in good faith, relying upon the laws of the State of Kansas to the end that in the event of the insolvency of any bank or banks to which complainants have so extended credits, or with whom they have made deposits, such bank or banks would be liable unto complainants for the payment of a pro-rata share of the assets of such insolvent banks (including the liability of stockholders), and without any preferential claim in favor of private depositors, as hereinafter more particularly complained of."

In paragraph IV of the bill of complaint, among other things it is averred (rec. p. 8, folio 13):

> "The purpose and intent of said Section 8 (Bank Guaranty Act), coupled with the provisions of said Section 1, * * * was and is to require * * * *all National banks* lawfully organized and doing business under and by virtue of the National Banking Laws of the United States, to become *incorporated State* banks under the laws of the State of Kansas, subject to the control of the Bank Commissioner of the State of Kansas, and by way of inducement thereto that they when so reorganized may become guaranteed State banks of the State of Kansas; *otherwise* that *they shall* be and are *intended to be discriminated against* under and by virtue of the said act of the State of Kansas of March 6th, 1909, that it compels * * * *all National banks in the State* of Kansas to become incorporated State banks of the State of Kansas, *or be unjustly* and unlawfully discriminated against, in violation of the provision of the Fourteenth Amendment of the Constitution of the United States."

In paragraph VI of the bill of complaint it is averred that when a State bank shall become insolvent the Bank Commissioner shall take charge of the bank and issue to its depositors a certificate of claim bearing six per cent interest as provided in Section 4 of the Bank Guaranty Act, and that after the Commissioner shall have collected and exhausted all of the assets of the bank, including stockholders' liability in payment of deposits upon which said certificates shall have been issued that the remainder due upon the certificates shall be paid out of the guaranty funds (rec. p. 10, folio 16).

> "That under and by virtue of the provisions, *supra,* the private *depositors* whose claims are guaranteed under said act are given a preferential claim over all *other creditors* of such insolvent bank,

in that all of the assets of the said bank, including the liability of stockholders, shall be applied, first, in payment of the claims of private depositors whose claims are guaranteed to the exclusion of any dividend upon the claims of other creditors; and furthermore, such private *depositors who are guaranteed* under the provisions of this act are entitled to have and receive the par value of their said claims, plus interest thereon at the rate of six per cent,—all to the exclusion of and in discrimination against all *other creditors of such insolvent bank;* and by reason whereof the said provisions in the said act impair the obligation existing between said bank and its other creditors whose claims are not so guaranteed, in violation of Section 10 of Article 1 of the Constitution of the United States, which prohibits any State from passing any 'law impairing the obligation of contracts,' and in violation of the provision of Section 1 of Fourteenth Amendment of Constitution of United States." * * *

"That complainants, by reason of their business throughout the different parts of the State of Kansas, are necessarily required to and *do have and make deposits* with State banks in the State of Kansas, some of *which have already gone into the guaranty system,* and in other banks, which, if the law be enforced, will be required to go into the said guaranty system, and that by reason of the premises if any of the said banks shall become insolvent, and their affairs wound up by the Bank Commissioner under said act, these *complainants so having deposits in the said bank, will be deprived of their lawful and constitutional right* to share *pro rata with other creditors* in the assets of the banks, and that their contracts with the said depositing banks will be impaired, in violation of the provision of Section 10, Article 1 of Constitution of the United States, and in violation of Section 1, Fourteenth Amendment of Constitution of the United States, severally quoted, *supra.*"

Paragraph VII of bill of complaint, after enumerating various classes of depositors and creditors, and of liabilities which are excluded from the benefits of the guaranty provisions of the Bank Guaranty Act, further avers (rec. p. 11):

> "By said Section 6 deposits which are *rediscounts* and deposits which consist of *money borrowed* from other banks, and all deposits *otherwise secured*, shall not be guaranteed under said act * * * but to the contrary all of the creditors which fall within any of the *excluded classes* above enumerated are not entitled to share in any of the assets of an insolvent bank, nor in the stockholders' liability, until after all of the *guaranteed depositors' claims are first paid in full* out of said assets and said stockholders' liability, and should the payment of such guaranteed claims exceed the entire assets of the bank and stockholders' liability, the *other creditors* above enumerated will receive no share whatsoever in the said assets of said insolvent bank, but are *unlawfully discriminated against*, * * * in violation of Section 10 of Article 1 of the Constitution of the United States, above quoted, and deprives all of said creditors of property without due process of law, and denies to them the equal protection of the laws, in violation of Section 1 of Fourteenth Amendment of Constitution of the United States."
>
> "In this connection complainants further aver that in the transaction of banking business it is necessary for banks to have, * * * and *complainant banks have, moneys on deposit with* banks which have *already gone into the bank guaranty* system, and with banks which have made application and intend to go into the bank guaranty system, * * * and it is necessary in the banking business in the State of Kansas for banks to borrow money temporarily from other banks and to rediscount paper in other banks, including

> banks which have gone into the guaranty system and banks which have made application and intend to go into the bank guaranty system, * * * and all of which claims, credits, loans and discounts, * * * are entitled to be protected equally with other claims against any insolvent bank; and that by reason of the premises, Section 6 of the said Bank Guaranty Law creates an unlawful and unreasonable discrimination as between claims, creditors and banks, and deprives and impairs the obligations existing between them and such insolvent bank or banks, in violation of Section 10 of Article 1 of the Constitution of the United States, and denies to them the equal protection of the laws and deprives them of property without due process of law, in violation of Section 1, Fourteenth Amendment of Constitution of United States."

It is further averred in paragraph IX of the bill of complaint (rec. p. 13):

> "And that in case the law remains in force and effect, *banks which may not accept the provisions of said law will* be forced to cease doing business for the reason that all, or a large part, of their deposits *will be withdrawn*, and will *be forced to wind up their business* or to reincorporate in such a way as to entitle them to the benefits of said law, if any such benefits there are." * * *
>
> "That your orators * * * are entitled to the equal protection of the law, and the said act discriminates against your orators' depositors and in favor of depositors in State banks, in that depositors in complainant banks are not guaranteed and cannot be guaranteed, while depositors in State banks, or a part of them, will, in case said law be enforced, be guaranteed."

In paragraph XIV in bill of complaint, among other things it is averred (rec. p. 1[illegible]

"That said Bank Guaranty Law, in its force and effect, and in its practical application, is intended to be *and* is unjustly and unlawfully discriminatory in favor of and in behalf of the banks which shall accept of its provisions, and *against all banks*, State or *National*, which shall *not accept of its provisions.*" * * * * * * * *

"That said law in its practical operation and effect is intended to and will enable, authorize and empower the banks which accept the guaranty provisions to hold out to depositors and to the public that the depositors therein are guaranteed, and that depositors in other banks are not so guaranteed, and all other banks are prohibited by the said law from giving out or advertising that their deposits are guaranteed, whereby and by reason whereof banks * * * may induce and persuade citizens of the State of Kansas, and others, to deposit their money in said guaranteed banks in preference to making such deposits in banks not so guaranteed, and therein and thereby to *wrongfully discriminate against and to deplete and diminish* the deposits in banks not under the guaranteed system and to the advantage of the banks which are in the guaranteed system, and as *against all banks* which cannot, under the terms of the act, go into the said guaranty system, * * * *including National banks*, * * * and by reason of the premises the said act is unconstitutional and void, in that it constitutes an unlawful and unreasonable discrimination in favor of certain banks, * * * and * * * against other banks, * * * and is unconstitutional and void, being in violation of the provisions of Section 1 of Fourteenth Amendment of Constitution of the United States, hereinbefore more specifically pleaded."

In paragraph XV of bill of complaint it is averred (rec. p. 18):

"The said Bank Guaranty Act in and of itself is unconstitutional and void, in that it creates an

ful and unreasonable discrimination in various and many particulars between the banks which may accept of the provisions of said act, and of the banks which * * * cannot accept of the provisions of said act, which discrimination consists, among other things: (a) in the fact that the depositors in one class of banks have the privileges of the guaranty provision, while the depositors in other banks do not have such privileges; (b) that as to the guaranteed banks their guaranteed depositors have a preferential claim over all other creditors, even to the absorption of all the assets of the bank to the exclusion of other creditors, while as to banks not entering into the guaranty system all creditors share *pro rata* in the division of the assets of the bank in case of insolvency; (c) that as to *National banks the National Banking Act of the United States provides that all creditors of the bank shall share pro rata in the assets of the bank, and the payment of the assets to depositors in preference to all other creditors is by the terms of the National Banking Act prohibited, and that the basis and purpose of the said Bank Guaranty Act is to create a preferential class of banks out of, from and among the banks of the State of Kansas.*"

In paragraph XVII of bill of complaint it is averred (rec. p. 19):

"That said Bank Guaranty Act contains a provision in Section 8 that National banks may reorganize as State banks, and thereby become guaranteed banks under said law, and by Section 13 of said act it is provided that any National bank doing business in the State of Kansas, under the laws of the United States, may at its option participate in the assessments and benefits of the bank depositors' guaranty fund 'upon the same terms and conditions as apply to State banks.' * * * Should a National bank disregard or refuse to comply with any recommendation made by the

Bank Commissioner in conformity with the provisions of this act, it shall immediately be subject to the provisions and penalties of this act and its certificate of membership in the bank depositors' guaranty fund shall be canceled.

"That said act in and of itself does not and cannot confer power upon National banks to accept the benefits or provisions thereof, and that National banks are without power or authority, under the National Banking Act of the United States, to guarantee the deposits in any other bank, or to appropriate or pay any part of their assets for the purpose of guaranteeing deposits in any other bank, either State or National, and for National banks to participate in the said guaranty fund provision would be *ultra vires* and would operate to forfeit, and would subject the charters of each and singular of the said National banks to forfeiture, and the closing up of such banks who participate therein under the orders and direction of the Comptroller of the Currency.

"That by the terms of the said Bank Guaranty Act the assets of a National bank (including complainants), which would be deposited under Sections 2 and 3 of said act, are subject to forfeiture if such National banks (including complainants) shall fail to comply with any of the requirements of the Bank Commissioner of the State of Kansas made pursuant to said act.

"That, under the said National Banking Act, the said banks are under the control of the officers of the United States, and particularly under the control of the Comptroller of the Currency, and in case of the insolvency of a National bank it is taken possession of and its affairs are administered under an officer of the United States, and its assets are distributed *pro rata* among all its creditors. Should said bank become subject to the Bank Guaranty Law of Kansas, it will be subject to the supervision of the Bank Commis-

sioner of the State of Kansas, and in case of insolvency would be taken possession of by the Bank Commissioner of the State of Kansas, and its assets would be distributed, first, in payment of the claims of guaranteed depositors to the exclusion of all other creditors, and that by reason of the premises, and of other matters and things which appear in the said respective laws, there would be a clash between Federal and State jurisdiction over a National bank that should accept of the provisions of the said Bank Guaranty Law. For these, and for other reasons appearing in the said National Banking Act, and in the said Bank Guaranty Law, National banks cannot participate in the said Bank Guaranty fund provisions, and its depositors cannot participate in the privileges of the said Bank Guaranty fund provisions.

"That the Governor, Bank Commissioner and Attorney General of the State of Kansas caused to be presented to the President of the United States, the Secretary of the Treasury and to the Comptroller of the Currency a request and application that National banks in the State of Kansas might be permitted to accept of the provisions of the said Bank Guaranty Law, and that such proceedings followed thereupon that the matter was referred to the Department of Justice for a judicial opinion. * * * Attorney General, handed down a written opinion wherein it was ruled, * * * that National banks were without corporate authority to comply with or accept of the privileges of the said Bank Guaranty Law, and that to do so would be *ultra vires* such corporations, and that the said Bank Guaranty Law was inconsistent with and in conflict with the National Banking Act.

"Plaintiffs further aver that by reason of the premises in the last preceding paragraphs averred that the said Bank Guaranty Act is unconstitutional and void in *that in its force, effect and operation it* constitutes and *creates an unlawful*

and wrongful discrimination against National banks, and if enforced in the State of Kansas as to State banks will deprive National banks (including complainants) of *property without* due process of law, and deprive them of the equal protection of the laws, in violation of Section 1 of Fourteenth Amendment of Constitution of the United States. * * *

That your orators, under their respective charters, became the agencies and instrumentalities of the Federal Government, and if the provisions of said Chapter 61, Laws 1909, are enforced, *your orators will be deprived of their trade and business, and their efficiency* as such agents and instrumentalities of the Federal Government will be impaired and destroyed."

IV.

ASSIGNMENT OF ERRORS.

First. That the court erred in entering its order and decree sustaining the demurrer of the defendants to the complainants' bill of complaint.

Second. That the court erred in ruling that the complainants' bill of complaint did not state a cause of action and in entering its order and decree dismissing the complainants' bill of complaint.

Third. That the court should have found that Chapter 61 of the Laws of 1909 of the State of Kansas, commonly known as the Bank Guaranty Deposit Act of the State of Kansas, unjustly and unlawfully discriminates against each and all of the National banks in the State of Kansas, including the complainants herein, and deprived each and all of said National banks, including the complainants herein, of property without due process

of law, and was and is as to each of the complainant banks in violation of the National Banking Act of the United States and in violation of Section 1 of Article 14 of Amendments to the Constitution of the United States, which provides that no state shall make or enforce any law which denies to any person within its jurisdiction the equal protection of the laws, and in violation of Section 10 of Article 1 of the Constitution of the United States, which prohibits any state passing a law impairing the obligation of contracts, and by reason of the premises that Chapter 61 of the Laws of 1909 of the State of Kansas, commonly known as the Bank Guaranty Deposit Act, is unconstitutional, null and void, and that its enforcement would result in irreparable damage and injury to the complainants and to each of them, and to all of the National banks of the State of Kansas similarly situated and accordingly should be enjoined.

BRIEF OF THE ARGUMENT.

V.

FACTS ADMITTED BY THE DEMURRER.

The demurrer to the bill of complaint admits to be true all of the material averments of fact and "all reasonable inferences to be drawn therefrom." *United States v. Des Moines Navigation & Ry. Co.*, 142 U. S. 510; *Dennison Mfg. Co. v. Thomas Mfg. Co.*, 94 Fed. 651-54. The demurrer admits all reasonable and fair intendments to be implied from the facts and all averments which are sufficient to justify the complainants introducing evidence thereunder to sustain the same. *Clark v. West*, 193 N. Y. 349; *Coatsworth v. Lehigh Valley Ry.*, 156 N. Y. 451; *Dailey v. Burlington etc. Ry. Co.*, 58 Neb. 396; *Eliot's Appeal*, 74 Conn. 586. A bill of complaint, when tested by

a demurrer, will be held to properly charge whatever may be implied from the statements therein by "reasonable and fair intendment." *Miliken v. Western Union Telegraph Co.*, 110 N. Y. 403; *Moss v. Cohen*, 158 N. Y. 240; *Sanders v. Soutter, et al.*, 126 N. Y. 193; *Sage V Culver*, 147 N. Y. 241. Said rule of construction is more rigidly adhered to where the defendant has failed to file a motion to have the petition made more definite and certain. *Upham v. Head*, 74 Kan. 17; *Bowersox et al. v. Hall & Co.*, 73 Kan. 99.

It follows, therefore, that the demurrer to the bill of complaint admits the following facts and reasonable intendments therefrom, to-wit:

(a) The National banks have accounts with State banks, which are not and can not be guaranteed.

(b) The National banks have given credit to the State banks in good faith supposing that in case of insolvency of the State banks the National banks would share *pro rata* with the other creditors in the assets of insolvent State banks.

(c) The purpose and intent of the Bank Guaranty Law is to require National banks to become reorganized as State banks.

(d) If National banks do not reorganize as State banks, they shall be and are intended to be discriminated against.

(e) Whether so intended or not, the effect of the Kansas Bank Guaranty Law is to discriminate against National banks, unless they shall reorganize as State banks.

(f) The effect of the law is to make a favorite of private depositors in State banks to the exclusion of the claims of National banks.

(g) National banks are required and do accept checks and drafts on State banks, but in case of insolvency of such State bank all of its assets may be taken to pay the claims of favorite depositors to the exclusion of the National banks.

(h) National banks having deposits in State banks will be deprived of their Constitutional right to share *pro rata* with other creditors in the assets of State banks.

(i) National banks negotiate rediscounts with State banks, but which claims, under Section 6, are excluded from the guaranty.

(j) National banks loan money to State banks, but the claims therefor are excluded from the guaranty.

(k) National banks have deposits with State banks for which they hold collateral security, but such claims are excluded from the guaranty.

(l) In the banking business it is necessary for National banks to have these fiscal transactions with State banks, but by the Bank Guaranty Law such claims are discriminated against.

(m) If the Bank Guaranty Law remains in force National banks will suffer a withdrawal of deposits.

(n) The Bank Guaranty Law is intended to and does unjustly favor State banks which accept of the law and discriminates against National banks and others which do not or can not become guaranteed banks.

(o) That State banks will use the certificates of the Bank Commissioner to hold out to the public that their deposits are guaranteed and which will result in a depletion of the deposits in National banks.

(p) National banks have not the corporate power

to accept of the Bank Guaranty Law and an attempt to do so would be a violation of their charters.

(q) National banks are agencies and instrumentalities of the Federal Government and the effect of the law is to deprive them of trade and business and to impair and destroy their efficiency.

(r) The Bank Guaranty Law impairs the obligations of contracts between the State banks and the National banks and denies the National banks the equal protection of the laws.

VI.

NATIONAL BANKS ARE INSTRUMENTALITIES OF THE FEDERAL GOVERNMENT CREATED TO PERFORM AN IMPORTANT BRANCH OF PUBLIC SERVICE. THE KANSAS BANK DEPOSITORS' GUARANTY ACT UNLAWFULLY AND UNJUSTLY DISCRIMINATES AGAINST NATIONAL BANKS IN THEIR MANIFOLD DEALINGS WITH STATE BANKS, AND THEREBY INJURES AND DESTROYS THEIR BUSINESS SUCCESS AND EFFICIENCY, AND IS THEREFORE UNCONSTITUTIONAL.

We are not objecting to the Kansas Statute on the ground that it may be designed to improve banking methods, or to maintain local institutions on a sound basis, and to secure depositors from loss. Our objection lies deeper than that. Our insistence is that the Kansas "Bank Depositors' Guaranty Act" prohibits National banks which are creditors of State banks from sharing *pro rata* with private depositors in the assets of an insolvent State bank. National banks cannot conduct a successful and profitable business unless they have business transactions with State banks by way of deposits, loans,

credits, discounts, interchange of checks, cashing drafts, etc. Yet by Section 6 of the Kansas Act claims of National banks as creditors for deposits in State banks which are primarily discounts, or for moneys loaned to State banks, or for deposits in State banks which are otherwise secured, are not subject to "guaranty," and therefore are excluded from participation in the assets of the insolvent State bank until after its private depositors are first paid in full. If a National bank shall receive "bills payable" from a State bank, or shall make temporary loans to a State bank, the same are likewise excluded from sharing in the assets of the insolvent State bank until after its private depositors are paid in full. If a National bank shall become the holder of drafts issued by a State bank which should become insolvent, or should accept and become the holder of checks drawn upon a State bank which should become insolvent, it would be excluded from sharing as a creditor in the assets of the insolvent State bank until after its private depositors had been paid in full.

If it is suggested that the purpose of the Kansas Bank Depositors' Guaranty Act is to make the State banks more sound or to improve banking methods, *we ask for whom?* The act itself answers the question because it selects by name those who shall share in those benefits, and it defines what creditors shall be excluded. From the analysis we have elsewhere made of Section 6 (p. 5) we find that the persons who shall share in the benefits are limited to deposits which do not bear interest, time certificates payable in less than six months, and savings accounts not exceeding in amount $100.00. We find excluded deposits which are rediscounts, deposits otherwise secured, money borrowed and bank's obligation as

endorser upon bills rediscounted, and bills payable for moneys borrowed from corresponding banks, etc. Again, we note that under the original banking law of Kansas, in case of insolvency, *creditors* of a bank pro rated in the assets, but under the Bank Depositors' Guaranty Act, *deposits* only are guaranteed, and certificates issued only for *deposits*, and that the assets of the bank including the liability of stockholders shall first be taken to pay the certificate issued for *deposits* to the exclusion of creditors mentioned *supra*.

From the very nature of the business relations which exist between National banks and State banks, National banks are not *depositors* in State banks in the sense in which that word is used in Section 6 of the act, but the dealings of National banks with State banks necessarily come within the phraseology of exclusion, either by direct terms or by implication.

Let us suppose a case for illustration. A State bank with a capital of $100,000.00 with deposits of $200,000.00, in the natural course of business, issues drafts to its mercantile customers in the sum of $20,000.00, which come into the hands of a National bank. Its customers likewise draw checks upon their deposits in said State bank to the amount of $20,000.00, which are received and cashed by the same National bank in due course of business. The same State bank by endorsement rediscounts bills to the amount of $20,000.00 to the same National bank. The same State bank borrows $20,000.00 money through the same National bank. The State bank becomes insolvent. A receiver takes possession. Depositors' certificates are issued to the amount of $200,000.00, for deposits shown upon the books of the bank, and the assets of the bank, and the double liability of the stockholders is first taken

to pay these deposit certificates. *What remedy has the National bank for its claims amounting to* $80,000.00? The Bank Depositors' Guaranty Act enforced according to its terms, results in a practical confiscation of the claims of the National bank for $80,000.00, by taking the money representing the $80,000.00, and appropriating the same to the payment of the depositors' certificate.

The question we present goes to the point that the State of Kansas by the Statute in question makes it unsafe for a National bank to do business with a State bank, for if it does it may find the State excluding it as a creditor from collecting its claims out of the assets of the State bank, an unjust and unlawful discrimination, and which in the end may be ruinous to the National bank itself.

No bank, State or National, can exist without public confidence. A National bank is one of deposit, as well as of discount. As an agent and instrumentality of the Federal Government, it is entitled to equal protection under the laws of the State where located. While a State may incorporate and foster a State bank, it cannot extend to such State bank privileges that, in operation and effect, necessarily destroy agencies and instrumentalities created and established by the Federal Government.

It is no answer to our contention to suggest that National Banks are not subject to State legislation, and are therefore, not subject to the provisions of the Bank Depositors' Guaranty Act, *for as we have above pointed out the State bank commissioner takes possession of the assets of the bank through a receiver, and appropriates all the money he finds in the bank together with its other assets in the payment of depositors.*

If that statute is constitutional and can be enforced, the National bank finds its claim confiscated, and its claim that it is a Federal and not a State Corporation and not subject to the provisions of the Kansas Statute, avails it nothing.

If Kansas can enforce such a statute, so can any other State in the Union, and what may become of National banks? National banks to maintain their efficiency and usefulness must be at full liberty to conduct banking transactions with all State banks, and to have dealings with depositors in State banks, and must have the same rights and privileges in the collection of moneys due them, as shall be accorded to other persons under the laws of the several states.

National banks are primarily governmental agencies and a law of a state which in anywise interferes with the business of National banks or destroys their credit, or impairs their usefulness, is unconstitutional. Mr. Justice Swayne, in *Farmers' and Mechanics' National Bank vs. Dearing*, 91 *U. S.* 29, *said p.* 33:

> "The National banks organized under the act are instruments designed to be used to aid the Government in the administration of an important branch of the *public service.* * * *The States can exercise no control over them, nor in any wise affect their operation,* except insofar as Congress may see *proper to permit.* * * The principle announced in the authorities cited is indispensable to the efficiency, the independence, and indeed to the beneficial existence, of the General Government; otherwise it would be liable, in the discharge of its most important trusts, to be *annoyed* and *thwarted* by the will or *caprice of every State in the Union.*"

In the case at bar the Kansas statute does affect the

business of National banks, and they are annoyed and thwarted in the collections of their claims from State banks by the caprice of Kansas.

It was the policy of Congress by the National Banking Law to make it unlawful for the States *"to create and foster an unequal and unfriendly competition"* against National Banks. This was said in *Mercantile Bank vs. New York,* 121 U. S. 138, where the court said, p. 155:

> "The main purpose, therefore, of Congress, in fixing limits to State taxation on investments in the shares of National Banks, was to render it impossible for the State, in levying such a tax, to create and foster an *unequal and unfriendly competition,* by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the Act of Congress is to be read in the light of this policy."

If we accept for the moment, that the effect of the "Bank Depositors' Guaranty Act" is, as pleaded in the bill of complaint and admitted by the demurrer, to deprive National banks as creditors of State banks from having their claims for *money loaned, for rediscounts, for checks drawn on State banks and for drafts issued by State banks* paid, as *depositors* are paid, and guaranteed as favorite depositors in State banks are guaranteed, it would seem to go without argument that such legislation creates and fosters *"unequal and unfriendly competition." It is a competition more unequal and unfriendly than was the Revenue Law under consideration in Mercantile Bank vs. New York, 121 U. S. 138.*

The further provision of the Kansas Bank Guaranty Law (Sec. 8, Ch. 61, Laws 1909) that National banks may recognize as State banks and thereby *"may immediately*

become a guaranteed bank," would appear on the face of it to be an invitation to, and according to the bill of complaint, was intended to induce National banks to surrender their charters and reorganize as State banks. To induce National banks to go out of business and reorganize as State banks would be to frustrate the purpose of the National legislation which provides for the creation of the National banks.

For like reasons State Revenue Laws under which discriminating taxes are levied, and which have a tendency to encourage investments in State banks as against National banks, have been held void. *Van Allen vs. The Assessors, 3 Wall, 573.*

VII.

THE KANSAS BANK DEPOSITORS' GUARANTY ACT IS UNCONSTITUTIONAL BECAUSE IT GIVES A DIRECT PREFERENCE TO PRIVATE DEPOSITORS IN STATE BANKS TO THE EXCLUSION OF NATIONAL BANKS AS CREDITORS, AND ALSO FOR THE ADDITIONAL REASON THAT THERE IS CREATED IN THE STATE OF KANSAS TWO BANKING LAWS RELATING TO THE DISTRIBUTION OF ASSETS OF AN INSOLVENT BANK WHICH RESULT IN UNEQUAL DISTRIBUTION OF THE ASSETS OF THE INSOLVENT BANK TO THE DISADVANTAGE OF NATIONAL BANKS.

Under the General Banking Law of the State of Kansas, in the event of insolvency, all of the assets of the bank are distributed ratably to all of the creditors of the bank so that each shall receive an equal percentage upon their respective claims as provided in the National Banking Act. Under the Bank Guaranty Act all of the assets of the bank first go to the *depositors.*

Section 4 of the act provides:

> "When any bank shall be found to be *insolvent* by the Bank Commissioner he shall take charge of such bank as provided by law, and proceed to wind up its affairs; and he shall, at the earliest moment, *issue to each depositor* a certificate, upon proof of claim, *bearing six per cent interest* per annum, upon which dividends shall be entered when paid, except where a contract rate exists on the deposit, in which case the certificate shall bear interest at the contract rate." * * *
> "After the officer in charge of the bank shall have realized upon the *assets of such bank* and *exhausted* the double liability of its stockholders, and *shall have paid all funds* so collected in dividends *to the depositors,* he shall certify all balances due on guaranteed deposits (if any exist) to the Bank Commissioner, who shall then, upon his approval of such certification, draw checks upon the State Treasurer, to be countersigned by the Auditor of State, payable out of the bank depositors' guaranty fund, in favor of each depositor for the balance due on such proof of claim as hereinafter provided."

An amendment to the General Banking Law was passed by the same Legislature which enacted the Bank Guaranty Law. In the General Banking Law the word *creditor* is used, while in the Bank Guaranty Law the word *depositor* is used. It is therefore quite clear that the Legislature understood the difference in meaning between the word *creditor* and the word *depositor* and therefore *intended,* under the Bank Guaranty Law, to take and divert all the assets of the insolvent bank to the payment of the claims of *depositors* to the exclusion of all other creditors. Stated in other words, the purpose of the Bank Guaranty Law was to secure *depositors,* even though it result in depriving *creditors* of their right to share in the assets of the bank.

This objection to the law is one which National banks can make, for the reason that National banks as a rule are *not depositors* in State banks, but National banks are *creditors* of State banks in the several instances we have above enumerated and as appears by the averments in the bill of complaint. It has been ruled that laws are unconstitutional which create two methods of distribution of the assets of banks which are out of harmony in their operation. This subject matter is treated in an interesting manner in the opinion of *Mr. Justice White* in *Davis v. Elmira Savings Bank,* 161 U. S. 275, where a statute of New York which gave a preference to savings banks on deposits in National banks was held to be unconstitutional. *Mr. Justice White,* on p. 283, said:

> "National banks are *instrumentalities* of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a State, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and *either frustrates the purpose* of the National legislation or *impairs the efficiency* of these agencies of the Federal Government to discharge the duties, for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court."

What *Mr. Justice White* said in the case *supra* reads as if it might have been written as a forewarning against the Kansas Bank Guaranty Law, pp. 283-284:

> "It is clear that these two statutes cover exactly the same subject matter. Both relate to insolvent banks; both ordain that the rights of preference on the one side and the duty of ratable distribution on the other shall only result from insol-

vency; both cover the assets of such banks coming, after insolvency, into the hands of the officer or person authorized to administer them. It is equally certain that both statutes relate to the same duty on the part of the officer of the insolvent bank; the one directs the representative to make a ratable distribution, the other requires, if necessary, the application of the entire assets to payment in full, by preference and priority over all others of a particular and selected class of creditors therein named," * * * "The conflict between the spirit and purpose of the two statutes is as pronounced as that which exists between their unambiguous letter. It cannot be doubted that one of the objects of the National bank system was to secure, in the event of insolvency, a just and *equal distribution of the assets of National banks among all unsecured creditors,* and to prevent such banks from creating preferences in contemplation of insolvency. This public aim in favor of all the citizens of every State of the Union is manifested by the entire context of the National Bank Act."

VIII.

THE KANSAS BANK DEPOSITORS' GUARANTY ACT WAS INTENDED TO AND IN FACT DOES INJURIOUSLY AFFECT AND UNLAWFULLY DISCRIMINATES AGAINST NATIONAL BANKS BECAUSE THEY ARE NATIONAL AND NOT STATE BANKS.

Our point of contention is that the law is unconstitutional because it was intended to and does injuriously affect and unlawfully discriminates against National banks. *There was a manifest purpose to have all banking institutions in Kansas become incorporated State banks.* Accordingly it excludes *Trust* companies and *Private*

banks and *National* banks, unless they shall reorganize as incorporated State banks (see Sec. 8, rec. p. 28). Under the general banking law of Kansas, Trust companies and Private banks were authorized to do a banking business, but both of them are excluded from the benefits of the guaranty, unless they become incorporated State banks. The same section of the statute puts *National banks* in the same category with Trust companies and Private banks being coupled together in the same sentence. The phrase is: "Any Trust company * * * and any Private bank or National bank * * * may reorganize as a State bank."

The complaint in paragraph 4 avers: "The purpose and intent of said Section 8, coupled with the provisions of Section 1," * * * "was and is to require" * * * "*all National banks*" * * * "to become incorporated State banks" * * * "subject to the control of the Bank Commissioner of the State of Kansas" * * * "*and all National banks* in the State of Kansas to become incorporated State banks" * * * "or be unjustly and unlawfully discriminated against, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States."

The provisions found in Section 13 of the Kansas Bank Guaranty Law by which it is provided that *National banks* may become guaranteed banks by submitting themselves to the control and jurisdiction of the Bank Commissioner of the State of Kansas, and in the event of insolvency, have its affairs wound up under Section 4 by the Bank Commissioner of the State of Kansas, indicates very clearly the purpose and intent on the part of the Legislature that the Kansas Bank Guaranty Law should apply to National banks.

The Kansas Bank Guaranty Law bristles all over with suggestions that the Kansas Banking Law is better than the National Banking Law and that the State banks in Kansas, when guaranteed, are better than National banks, and holding out the bait by direct terms in Section 8 and Section 13 that National banks may have the benefit of these conditions if they become State banks or subject themselves to the jurisdiction of the State of Kansas.

By the terms of the act (Sec. 13, rec. p. 29) the National banks have to subject themselves absolutely and unconditionally to the control of the State of Kansas. In case of insolvency they would have to agree to be wound up by the State of Kansas under a receivership appointed by the State of Kansas, and their assets distributed under the laws of the State of Kansas. *This would absolve the General Government absolutely and unconditionally of all control whatsoever over a National bank and, ipso facto, would make it for all purposes and intents a State bank.* This would destroy National banks as "*instrumentalities of the Federal Government.*"

A law may be unconstitutional when, either by its terms or by its application, or by reason of results arising from its enforcement, it injures, damages, destroys or discriminates against persons, companies or a business, even though such person, company or business be beyond the jurisdiction of the State. If Kansas passed a law which forbid its citizens depositing money in National banks, such law would be unconstitutional in that its effect would be to injure and destroy National banks. It may be true that such law would be unconstitutional for other reasons, nevertheless it would be obnoxious to the National Banking Act and would be unconstitutional for that reason. Suppose the State of Kansas passed a

law providing speedy remedy for the collection of debts by State banks and by another section provided that National banks should not have a right of suing in the State courts; such law would be unconstitutional and it would not do to say that the statute was not obnoxious to the Fourteenth Amendment of the Constitution of the United States on the suggestion that National banks were not subject to the jurisdiction of the State of Kansas. Suppose the State of Kansas passed a law to regulate railroad rates and so undertook to enforce the law that it interfered with or affected interstate commerce. Would not the courts hold the law to be unconstitutional in so far as it affected interstate commerce? It would not be a sufficient defense of the law to say that interstate commerce is not subject to the jurisdiction of state legislation.

It is perhaps needless to amplify illustrations, as many more will occur readily to the court. However, before dismissing the point we will recur to the case of *Davis v. Elmira Savings Bank*, 161 U. S. 275, quoted from *supra*, wherein a statute of New York was held to be unconstitutional which gave a preference to deposits made by savings banks. The constitutionality of that law could not have been defended upon the suggestion that the National banks were not subject to the jurisdiction of the State of New York. *It was because National banks were not subject to the jurisdiction of the State of New York that the law was held to be unconstitutional.* So in the case at bar our contention is that the Kansas Bank Guaranty Law is unconstitutional *because National banks are not subject to the jurisdiction of the State of Kansas.* If it be true that National banks are, or are intended to be, injuriously and unlawfully injured by the Kansas

Bank Guaranty Law, that fact of itself renders the law unconstitutional.

Our contention under this head is supported by the case of *Western Union Telegraph Co. v. Kansas,* 216 U. S. 1, and by other cases therein cited.

We think the Court of Appeals conceded the correctness of our contention in the closing part of its opinion, where it said:

> "Ground for complaint would exist if the statute had, for instance, made it an offense to deposit funds in National banks or subjected them to a higher rate of taxation than that imposed on like deposits in State institutions, or in some other perceptible way had evinced an evil and discriminating purpose, or an attempt to subject them to rules inconsistent with those prescribed by Congress."

IX.

THE LAW WILL PRESUME THAT THE LEGISLATURE KNEW THAT NATIONAL BANKS COULD NOT ACCEPT OF THE PROVISIONS OF SAID LAW AND THAT THE LEGISLATURE INTENDED TO DISCRIMINATE AGAINST THEM, AND TO INDUCE THEM TO REORGANIZE AS STATE BANKS.

It is immaterial whether this discrimination be direct or indirect. When the State of Kansas, by direct or indirect legislation, provides that a National bank, which may loan money to a State bank, or which may accept a note endorsed by a State bank, or which rediscounts paper for State banks, or which accepts checks drawn upon State banks, or which receives bills of exchange issued by State banks, shall *not have an equal right* with other persons to share in the assets of a State bank in the

event of insolvency, but that, in which last event the *favorite depositors* of the State bank shall have a right in the first instance to take *all* of the assets of the State bank in payment to their claims, to the exclusion of the rights of the National bank as a creditor, there is a manifest intent to discriminate against a National bank. The bill of complaint having averred this intent to discriminate, and where, as above state, there is an apparent and manifest actual discrimination, *the law will presume that there was a design to discriminate.*

Judge Pollock, in his opinion granting the injunction, said (rec. pp. 74-75-76):

> "In the light of this relation of complainants, as National banks, to the General Government and the State, taking into consideration the fact that National banks by the very law of their creation, which all are conclusively *presumed to know,* are disqualified and prohibited from accepting the provisions of the act in question, * * * and further, *considering the averments of the bill,* not only that the act in its actual operation *was intended to deprive complainants of their customers and business* * * * to such an extent as to *destroy their business and compel them to surrender their charters,* * * * can there be a doubt of the right of complainants to relief from such unhappy situation, or that an act of the State authorizing corporate citizens of its creation to so embarrass and destroy other citizens created by National authority, which cannot escape by accepting its terms, is such an unjust and unreasonable discrimination as amounts to a denial to complainants of the equal protection of the laws?" * * * "But, as to complainants, disqualified by the law of their very existence, the benefits and obligations of which they must surrender before they may accept the invitation extended, the very invitation itself becomes a mere *brutum fulmen* and

is in legal effect as though complainants, by name, had been expressly forbidden and prohibited from accepting and enjoying the privileges extended by the act to those institutions of State origin qualified, or which may become qualified, under its terms." * * *

"From a consideration of the provisions of the act in question for the purpose of discovering its true intent, object and purpose, in view of the fact that National banks are prohibited from accepting its provisions and participating therein, and as such prohibition arises from the law of their creation, *which is conclusively presumed to be known of all men, it must be found the true intent, object and purpose of the act in question* was to enable certain banks incorporated under the laws of the State, by accepting its provisions, to create and maintain a fund in possession of the Treasurer of the State, to be employed for the purpose of securing the payment of certain favored contracts of deposit made with any bank contributing to such fund in case of the insolvency of any contributing bank, to the *exclusion* of all other contract creditors with such insolvent bank, and for the purpose of making public display of the fact that the deposits with any contributing bank are guaranteed under the terms of the act for the purpose of attracting depositors to such bank. If this be its true intent and purpose, must not the *natural* and *inevitable* effect of such an act be to *attract deposits,* and especially those of the guaranteed class, *from all other banks* not participating, and draw them into the banks cooperating with the State in the enterprise, to the disadvantage and loss of those prohibited from participating. This is the actual effect of the arrangement in operation as averred by complainants in their bill."

In *Henderson v. Mayor of N. Y.,* 92 U. S. 259, it was said, "In whatever language a statute may be framed,

its purpose must be determined by its natural and reasonable effect.''

It is no answer to say that the Legislature of Kansas may have intended to make the depositors in State banks more secure and did not have in mind any evil intent against National banks, for, as it was held in *Easton v. Iowa,* 188 U. S. 220-238: ''It is not competent for State Legislature to interfere, *whether with hostile or friendly intentions,* with National banks or their officers in the exercise of the powers bestowed upon them by the General Government.''

The suggestion that National banks are unaffected by the statute because beyond the jurisdiction of Kansas does not meet the point for another reason, as stated in ***Bailey vs. The People,*** 190 Ill., 28-36:

> ''That an act which arbitrarily discriminates against one class in the transaction of a business or a lawful occupation, and leaves *unaffected* by such discriminatory enactment *other persons* or classes of persons engaged in acquiring property in a manner not distinguishable in character from that in which the class discriminated against is employed, is in contravention of the constitutional guaranties under consideration.''

In *Mugler v. Kansas,* 123 U. S. 623-661, it is said courts must not deem themselves *''bound by mere forms, nor are they to be misled by mere pretenses.* They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the Legislature has transcended the limits of its authority.''

In *Minnesota v. Barber,* 136 U. S. 313-319, the court said:

> "There may be no purpose upon the part of a Legislature to violate the provisions of that instrument, and yet a statute enacted by and under a form of law may, by its necessary operation, be destructive of rights granted or secured by the Constitution. In such cases the court must sustain the supreme law of the land by declaring the statute unconstitutional and void."

In *Galveston, Harrisburg, etc., Ry. Co. v. Texas,* 210 U. S. 217, the court said, p. 227:

> "Neither the State courts nor the Legislatures, by giving the tax a particular name or by the use of some form of words, can take away our duty to consider its nature and effect. If it bears upon commerce among the States so directly as to amount to a regulation in a relatively immediate way, it will not be saved by name or form. *Stockard v. Morgan,* 185 U. S. 27-37; *Asbell v. Kansas,* 209 U. S. 251-254-256."

In *Crutcher v. Kentucky,* 141 U. S. 47, the court held a statute of Kentucky licensing agencies of foreign express companies to be unconstitutional and used this language: "*Whether intended as such or not, they operate as such.*"

The foregoing cases and many others are reviewed in *Western Union Telegraph Co. v. Kansas,* 216 U. S. 1, where the court said that it must look "*at the natural and reasonable effect* of the statute, disregarding mere forms of expression." In that case the statute of Kansas under consideration expressly disclaimed any intent to levy a tax upon the interstate business of the Western Union Telegraph Company. Nevertheless, the court held the law to be unconstitutional. Mr. Justice Harlan, in the opinion, said, p. 27:

> "But it is said that none of the authorities cited are

> pertinent to the present case, because the State *expressly disclaims* any purpose by the statute in question to obstruct or embarrass interstate commerce, but seeks only to prevent the telegraph company from entering the field of domestic business in Kansas without its consent and without conforming to the requirements of its statute. But the disavowal by the State of any purpose to burden interstate commerce cannot conclude the question as to the fact of such a burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. *If the statute, reasonably interpreted, either directly or by its necessary operation,* burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This court has repeatedly adjudged that in all such matters the judiciary *will not regard mere forms,* but will look through forms to the substance of things. Such is an established rule of constitutional construction as the adjudged cases abundantly show."

If in the above quotation, *National banks* were substituted for the words "interstate commerce," it would be directly in point in its application to the Kansas Bank Guaranty Law.

X.

FACTS GATHERED FROM THE REPORTS OF THE COMPTROLLER OF THE CURRENCY SHOW THAT BANK GUARANTY LAWS SO CALLED ARE CONDUCIVE TO IMPROVIDENT BANKING, AND ARE DESTRUCTIVE TO NATIONAL LAWS.

It appears from a report of the Comptroller of the Currency, 1909, that during the year ending October 31, 1909, 149 National banks in the United States went into liquidation. Of these, 25 were absorbed by other National banks, leaving only 124 that actually quit business as National banks. Of these 124, 74 were National banks in Oklahoma. Of these 74 National banks that went into liquidation in Oklahoma, 14 went out of business and 60 reorganized as State banks. These facts show that the Bank Guaranty Law of Oklahoma, in a period of about one year, destroyed more National banks than went into liquidation in all the other States of the Union during the same period of time.

From the same report it appears that within a period of three months under the Kansas Bank Guaranty Law, seven National banks reorganized as State banks. *We ask the question whether the National banks' complainants in this suit did not have a right to believe the averments in their bill of complaint to be true that the effect of the Kansas Bank Guaranty Law (as well as of such Bank Guaranty Laws in other States) is and will be to destroy the efficiency of National banks and to compel them to quit business or to reorganize as State banks.*

It appears by a report from the Comptroller of the Currency, under date of April 26, 1910, that between February, 1908, and March, 1910, *91 National* banks had gone out of business as National banks in Oklahoma, and

that from February, 1908, to November, 1909, State banks in Oklahoma had increased in number 192, and that deposits in State banks in the same period of time in Oklahoma had increased nearly 300 per cent. It is a condition of affairs more destructive to National banks than any species of taxation, or any other class of discrimination which the States have inaugurated against National banks.

It appears in the report of the Comptroller of the Currency, 1911, Table No. 86, that the total number of all banks in the six New England States is 1,079. In the State of New York 895, and in the State of Kansas alone there are 1,082.

The same report shows that the cash on hand in the banks of the six New England States was $90,353,515.73, and that all resources of the New England banks was $2,933,717,841.64. In the State of Kansas, with three more banks than in all New England, the cash on hand was $13,835,703.66, and all resources $228,462,254.83. In the New England banks there were deposits subject to individual checks $778,623,116.00, while in about the same number of banks in the State of Kansas there were deposits subject to individual checks $112,822,922.80. The same report shows that overdrafts in all the New England banks were $729,522.49, while in about the same number of banks in the State of Kansas, with about one-sixth of deposits subject to checks, the overdrafts were $1,190,426.07.

From the above data it appears that the State of Kansas has three more banks than the six New England States, but less than one-third of the aggregate population, and that the cash on hand in the banks in Kansas is about one-seventh of that in the New England States, and the deposits subject to check about one-seventh of that

of the banks in the New England States, yet the overdrafts in Kansas are $460,903.58 greater than in New England.

The same report shows that the number of State banks in Kansas is 855, a larger number than in any other State in the Union excepting Missouri.

The above data is sufficient to show the risk and hazard which National banks must take in doing business with State banks in Kansas, and that National banks cannot do a prosperous business in Kansas without having extensive transactions with its 855 State banks. In case insolvency should befall the State banks, the National banks would suffer irretrievable losses by reason of the features of the Bank Depositors' Guaranty Law, which prohibits them as creditors from sharing in the assets of insolvent State banks.

XI.

NATIONAL BANKS ARE SUFFICIENTLY INTERESTED IN AND EFFECTED BY THE KANSAS BANK DEPOSITORS' GUARANTY ACT TO CHALLENGE ITS CONSTITUTIONALITY AND TO ASK THAT ITS ENFORCEMENT BE ENJOINED.

Any corporation has a right to challenge a statute if its enforcement will directly affect it or injure or damage its property or business.

In *City of Chicago v. Collins,* 175 Ill. 445, the court ruled that a city ordinance would be enjoined *"at the instance of any person whose interests are impaired by it."*

In *City of Hutchinson v. Beckham,* 118 Fed. 399, it was held that a bill of complaint which averred that the

enforcement of an ordinance would "*seriously interfere with the prosecution of complainant's business*" was sufficient to entitle the plaintiff to maintain the action.

The degree of interest which the complainants must have in the subject matter in controversy to entitle them to maintain the suit is not the point at issue. The case made under the pleadings is that the business of the complainant banks is directly interfered with in the many particulars hereinbefore stated, and which stands admitted by the demurrer.

Old Colony Trust Co. et al. v. City of Atlanta, 83 Fed. 39, in considering the question whether the trust company had sufficient interest to enjoin the enforcement of an ordinance regulating street car fares, the court said (p. 40):

> "It is enough to give them (trust company) a standing in court if they show a *well grounded apprehension of loss,* and we think that is shown in this case."

Again the court said (p. 45):

> "We hold, therefore, first, that the complainants have shown such an interest in the *subject matter* as to give them a standing in court to question the validity of this ordinance."

The same case, *supra,* was affirmed in the Court of Appeals, *City of Atlanta v. Old Colony Trust Co. et al.,* 88 Fed. 859.

Cicero Lumber Co. v. The Town of Cicero et al., 176 Ill. 1, is a case where the court sustained a suit by the lumber company to enjoin an ordinance creating a boulevard on the ground that *the indirect effect* would be to injure the business of the lumber company.

Merchants' Exchange v. Knott, 212 Mo. 616, is a case which ruled that an averment in the petition to the effect that *irreparable injury* would result, was sufficient upon a demurrer to the bill to show that the plaintiff had a right of action, and said (p. 6477):

> "Now an unconstitutional law is the same as no law at all; and on *demurrer* we must assume the *allegations of the petition relating to irreparable injury in the way specified are true.*"

The foregoing authorities seem sufficient to establish our point of contention that the complainant banks have a legal interest in the matter in controversy, and that the averments setting forth their legal interest and resulting damages stand admitted by the demurrer.

The said Bank Guaranty Law directly deals with depositors; it directly deals with creditors; it directly deals with rediscounts; with moneys borrowed; with all loans and debts in any manner secured, hence the Bank Guaranty Act directly deals with the complainant banks, because, as admitted by the demurrer, these banks have business dealings each with the other; loan their credit each to the other, and in the banking business necessarily keep accounts each with the other.

National banks should not be required to remain silent until one or more State banks may become insolvent because then the harm has been done and passed beyond remedy.

The Kansas Bank Guaranty Law is as vicious in principle as if said law had provided in express terms that all citizens of the State of Kansas should be required to deposit all their moneys in State banks and should not be permitted to make deposits in National banks. The difference is only in form, and disagree not in principle.

XII.

THE COMPLAINANTS AS TAXPAYERS HAVE A RIGHT TO MAINTAIN THIS ACTION.

It is averred in paragraph 17 of Bill of Complaint (rec., p. 21):

> "That your orators and their respective shareholders are taxpayers and have paid large sums of money into the general revenue fund of the state on account of levies and assessments made against the real estate owned by your orators, and on account of their capital stock, and will be required to make such payments, and that such funds have been and are being paid out by the defendants, and, unless enjoined, will continue to be paid out in connection with the operation and enforcement of said chapter 61, laws of 1909, and be used to build up and foster an unequal and unjust combination of State banks against National—the operation and effect of which will compel your orators to surrender their charters as National banks and their trade and business will be destroyed."

National banks in their dealings with State banks do not have any of the benefits of the guaranty law, neither do the depositors in National banks. It appears from the Bill of Complaint quoted, *supra,* and admitted by the demurrer that each of the complainant banks pay taxes used to aid in the enforcement of this Guaranty Law, which discriminates against and injuriously affects National banks.

KANSAS STATUTE AUTHORIZES INJUNCTION TAX MATTERS.

Section 5148, Gen. Stat. Kas., 1905, provides:

> "An injunction may be granted to enjoin * * * any public officer, board or body from entering into any contract or doing any act not authorized by law that may result in the creation of any public burden or the levy of any illegal tax, charge or assessment; and any number of persons whose property is or may be affected by the tax or assessment so levied or whose burdens as taxpayers may be increased by the threatened unauthorized contract or act, may unite in the petition filed to obtain such injunction."

This court in *Cummings v. National Bank*, 101 U. S. 153, in speaking of the remedy by injunction under an Ohio statute, said (p. 157):

> "But the statute of the state expressly declares that suits may be brought to enjoin the illegal levy of taxes and assessments or the collection of them. Section 5848 of the Revised Statutes of Ohio, 1880; vol. liii. Laws of Ohio, 178, Sections 1, 2. And though we have repeatedly decided in this court that the statute of a state cannot control the mode of procedure in equity cases in federal courts, nor deprive them of their separate equity jurisdiction, we have also held that where a statute of a state created a new right or provided a new remedy, the federal courts will enforce that right either on the common law or equity side of its docket, as the nature of the new right or new remedy requires. *Van Norden v. Morton*, 99 U. S. 378. Here there can be no doubt that the remedy by injunction against an illegal tax, expressly granted by the statute, is to be enforced, and can only be appropriately enforced on the equity side of the court."

In paragraph 14 of the Bill of Complaint (rec., p. 16), it is averred that the State printer will print forms and

blanks at the expense of the State, to be used in carrying out said law, and requires the Bank Commissioner and his clerks, the State Treasurer and his clerks, to carry out the law at the expense of the State, and that there were 700 State Banks existing at that time entitled to become guaranteed banks, and that the carrying on of the scheme will be *"a great expense to the State which could be paid only by money raised by taxation * * * and that all money used in the carrying out of said scheme will be taken from the taxpayers of the State of Kansas without due process of law, and the effect of said act would be to deprive the taxpayers of Kansas of property without due process of law."*

It is a tax on National banks and their stockholders, not to benefit or protect National banks, but to aid depositors in State banks, and under such circumstances that depositors in National banks are excluded from its benefits, and also to take all the assets of an insolvent State bank for the benefit of its guaranteed depositors, to the exclusion of all claims of National banks as general creditors. This taxation renders the law unconstitutional.

XIII.

THE FEATURES OF THE BANK GUARANTY LAW WHICH MAKE IT OBNOXIOUS TO NATIONAL BANKS ARE SO CONNECTED WITH THE OTHER SECTIONS OF THE ACT AS TO MAKE THE WHOLE UNCONSTITUTIONAL.

Section 1. Excludes National banks.

Section 6. Excludes from payment all claims which National banks may have arising out of their business relations with said banks until after the guaranteed private depositors shall first be paid in full, even though such payment exhausts all of the assets of the bank and the double liability of the stockholders.

Section 13 provides for the reorganization of National banks as State banks, or their submission to the jurisdiction of the bank commissioner of the State of Kansas. Indeed, it is apparent that the sections of the law, either directly or indirectly affecting National banks, are so interwoven with the provisions relating to State banks that there can be no separation. It is impossible to enforce the law as to State banks without producing the discrimination against and disastrous effects to National banks, hence it follows that if the act is unconstitutional as to National banks that the entire act must fall.

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Illinois Central R. R. v. McKendree, 203 U. S. 514.
Trademark Cases, 100 U. S. 82.
Baldwin v. Franks, 120 U. S. 678-685.
Warren v. Mayor, etc., 2 Gray, 84.
Western Union v. Austin, 67 Kans. 208.

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In the Supreme Court of the United States.

THE ABILENE NATIONAL BANK OF ABILENE, KANSAS, *et al., Appellants.*

vs.

J. N. DOLLEY, Bank Commissioner of the State of Kansas, and MARK TULLEY, as State Treasurer of the State of Kansas, *Appellees.*

BRIEF AND ARGUMENT OF APPELLEES.

STATEMENT.

The record shows that on the 6th day of March, 1909, the legislature of the state of Kansas enacted and the governor approved chapter 61 of the Laws of 1909 of the state of Kansas, being commonly known as the "Bank Depositors' Guaranty Act." By the express terms of the act, being section 17 thereof, it was to take effect and be in force from and after June 30, 1909, and its publication in the official state paper. (See appendix.)

Immediately after the taking effect of the act, a large number of state banks qualified under the law and were admitted as guaranteed banks. The number of state banks which, within a reasonable time after the taking effect of the act and before the issuing of the injunctive order here complained of, which were admitted under the provisions of the act to the guaranty fund, was about four hundred. The total number of state banks within the state of Kansas at that time

was about seven hundred. There were about two hundred national banks doing business in the state of Kansas at that time.

On the 14th day of September, 1909, after this guaranty law had been in operation for about two months and a half, the Abilene National Bank and about one hundred and forty-six other national banks, joining as complainants, filed their bill in the circuit court for the district of Kansas, first division, seeking to enjoin the appellants herein, state officers, who were charged with certain duties under the bank guaranty act, from exercising those duties. Under the provisions of the act, the duties imposed upon these appellants were such that an injunction against them prohibiting them from exercising those duties would, in its effect, destroy and nullify the provisions of the whole enactment.

The circuit court did not issue a restraining order upon presentation of the bill; the record showing that the bill was presented to the circuit court on Saturday, the 25th day of September, 1909, a notice having already been served that an application for a temporary injunction would be heard on Tuesday, the 28th day of September. The court, after having heard the objections of the defendants, on the 25th day of September, continued the matter for hearing until the 28th day of September.

On the 28th day of September, after certain amendments of the bill of complaint were filed, the defendants, in the circuit court, filed a demurrer to the bill, and the question upon the demurrer and application for a temporary injunction then came before the circuit court. Preliminary argument was had and the court fixed reasonable time in which briefs should be filed. Briefs were filed, and on the 24th day of December, 1909, the circuit court overruled the demurrers and made an order sustaining the application for a temporary injunction, and the injunctive order complained of was issued. (175 Fed. Rep. 365.)

At about the time of the commencement of this suit

there were two other suits commenced in the circuit court. One was the case of The Assaria State Bank v. these appellants, wherein about forty-five state banks joined as complainants, seeking the same relief and upon largely the same averments as the bill herein. The other was the suit of Frank Larrabee, a stockholder in the State Exchange Bank of Hutchinson, Kan., against the appellants herein and the State Bank of Hutchinson, Kan., seeking practically the same relief.

Demurrers were also filed by the defendants in these two latter suits, and they were all argued together and included in the same briefs. The circuit court, at the time of granting the injunctive order in this case, sustained the demurrer of the defendants below in the suit brought by the state banks.

The state bank case was entitled "Assaria State Bank of Assaria, Kan. *et al.*, v. J. N. Dolley, as Bank Commissioner, *et al.*" The complainants in that case prosecuted an appeal direct from the circuit court to this court. At that time there was pending in this court the case of Ashton C. Shallenberger, Governor of the State of Nebraska, *et al.*, v. The First State Bank of Holstein, Neb., also the case entitled "Noble State Bank, Plaintiff in Error, v. C. N. Haskell, Governor of Oklahoma, *et al.*" These three cases involved the bank guaranty laws of the states of Nebraska, Oklahoma and Kansas, and were argued together on the 8th, 9th and 10th days of December, 1910. Two opinions were written in the cases—one in the Oklahoma case, and one in the Kansas case. The decision in the Oklahoma case is found 219 U. S. 104 (31 Sup. Ct. Rep. 186). The Kansas case, in which also the Nebraska case is referred to, and its decision is made the same as in the Oklahoma case, is found at 219 U. S. 121 (31 Sup. Ct. Rep. 189).

In the case of Frank Larrabee v. The Exchange Bank of Hutchinson, Kan., above referred to, the circuit court overruled the demurrer of the defendants

and granted the temporary restraining order. Inasmuch as this case only affected one bank, and inasmuch, further, as all of the questions involved in that case would be presented upon an appeal of this case and the Assaria State Bank case, the defendants in the Larrabee case took no appeal, but filed the necessary pleadings upon which an issue of fact was joined. After the decision of the Assaria State Bank case in this court the Larrabee case was dismissed in the circuit court.

The defendants in this case appealed to the circuit court of appeals of the eighth circuit, where the case was argued on May 20, 1910, and a decision rendered reversing the order of the circuit court. This opinion is reported in 179 Fed. 461.

In due course the complainants filed in this court a petition for writ of certiorari to the court of appeals. This petition was heard upon printed brief and oral argument, and on October 24, 1910, the petition was denied.

31 Sup. Ct. Rep. 223.

Thereafter the record was certified to the circuit court. Judgment was entered in that court, setting aside the former order, sustaining the demurrers, and, no request to amend being made, dismissing the complaint, from which judgment this appeal was taken.

This opinion of the circuit court of appeals has not been appealed from except as it is involved in this appeal, which comes direct from the circuit court upon the dismissal of the complaint by that court after the decision in the circuit court of appeals. All of the questions which are raised and presented in this hearing were raised and presented to the circuit court of appeals.

For the convenience of this court, and because we believe the decision of the circuit court of appeals correctly stated the law upon all the questions raised, we here copy in full the decision of that court. The

opinion was written by Mr. Justice HOOK and becomes the law of this case, unless set aside by this court. The opinion of the court follows.

U. S. CIRCUIT COURT OF APPEALS.

EIGHTH CIRCUIT.

No. 3331. May Term, 1910.

J. N. DOLLEY, as Bank Commissioner of the State of Kansas, *et al., Appellants*, v. ABILENE NATIONAL BANK, OF ABILENE, *et al., Appellees.*

Appeal from the Circuit Court of the United States for the District of Kansas.

Mr. A. C. Mitchell, Mr. G. H. Buckman, and *Mr. Fred S. Jackson*, for appellants.

Mr. John L. Webster, and *Mr. Chester I. Long* (*Mr. B. P. Waggener, Mr. J. W. Gleed*, and *Mr. John L. Hunt*, on the brief), for appellees.

Before VAN DEVANTER, HOOK and ADAMS, Circuit Judges.

HOOK, Circuit Judge, delivered the opinion of the court.

One hundred and fifty national banks domiciled and doing business in Kansas sued the bank commissioner and the treasurer of that state to enjoin them from carrying into effect a Kansas statute approved March 6, 1909, known as the Bank Depositors' Guaranty Act. (Laws 1909, ch. 61.) At the instance of the banks the circuit court granted a temporary injunction and the state officers took this appeal.

The questions before us require no more than a brief outline of the provisions of the statute. There are many details of the guaranty scheme of which much complaint is made, but we think they are so clearly matters with which the national banks have no legal concern, or are so manifestly within the legislative province of the state, it is unnecessary to mention them. The statute authorizes banks incorporated under the laws of the state and possessing prescribed qualifications to join in contributing to and maintaining a fund for securing certain classes of their depositors against loss. The administration of the law is committed to

the bank commissioner, the custody of the fund to the state treasurer. Whether a bank shall become a party to the scheme is optional, not compulsory. Its desire to join is signified by a resolution of its board of directors authorized by its stockholders. If upon an examination of its affairs by the bank commissioner it is found to be qualified, it then contributes to the permanent guaranty fund a sum in bonds or cash proportioned to the deposits to be guaranteed and receives a certificate that it has complied with the provisions of the act and "that its depositors are guaranteed by the bank depositors' guaranty fund of the state of Kansas." The permanent fund is raised to a fixed amount by the initial payments and, if necessary, by annual assessments of one-twentieth of one per cent of the guaranteed deposits in each bank, less capital and surplus; and any depletion of the fund caused by payments to depositors in insolvent banks is cared for by like assessments, not exceeding five in any calendar year. When a guaranteed bank, so-called, becomes insolvent, the bank commissioner takes charge, winds up its affairs, and applies its assets and the moneys realized from the liability of its stockholders. When these are exhausted, balances still due guaranteed depositors are paid in full from the guaranty fund if it is sufficient, and if not, then by continued assessments, not exceeding five annually, as above stated, upon all banks which are parties to the plan. It is also provided that national banks may avail themselves of the act upon compliance with the prescribed conditions.

The visitorial power of the state bank commissioner over the guaranteed banks and his control of their liquidation in case of insolvency, including the authority to appoint receivers, are radically inconsistent with the jurisdiction of the comptroller of the currency conferred by Congress over national banks. There are other points of conflict in the operation of the Kansas statute and the national banking laws, and it is obvious that the national banks can not lawfully avail themselves of the provisions of the state enactment. Without further and appropriate legislation by Congress they can not throw off the duties and obligations prescribed by the law of their creation or enter into engagements that will subject their corporate affairs to the supervision and control of another sovereignty. This view was expressed by the attorney-general of the United States in an opinion delivered April 6,

1909. The Kansas statute should, therefore, be regarded as though it related exclusively to banks incorporated under the laws of the state.

In their final analysis the objections of the national banks to the Kansas statute are reduced to two propositions: First, that since they cannot avail themselves of the provisions of the statute it operates to deny them the equal protection of the laws, contrary to the fourteenth amendment to the constitution; and, second, that the effect of the guaranty plan will be to attract depositors from the national banks to the guaranteed state banks, and will therefore impair the efficiency of the former as instrumentalities of the national government. Counsel admit this to be their position. The federal questions presented by these propositions constitute the ground of jurisdiction of the circuit court, and upon their soundness rests the temporary injunction it granted.

The national banks owe their existence to the laws of the United States, and in respect of the things which pertain to supervision and control by the sovereignty which created them they are as much beyond the jurisdiction of Kansas as though they were domiciled in Maine or California. Their exclusion from the operation of the statute in question is not from any design on the part of the state to discriminate against them, but results from the limitation of governmental powers. Because of their origin and the paramount authority of Congress they are not, in matters inhering in the character of their corporate structures, within the legislative province of the state. The state can neither take away the essential powers granted them by Congress nor confer others that are inconsistent. Its legislation is necessarily limited to objects within its jurisdiction.

The fourteenth amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." A conclusive answer to the objection to the Kansas statute now being considered would seem clearly to appear from the face of the amendment itself. A most extraordinary condition would exist if the legislation of the states properly confined within its appropriate sphere were to be held invalid because it does not extend to and embrace objects beyond their jurisdiction. A legislative *impasse* would be created—neither the nation nor the states could move forward, the former because power over matters purely of state concern is not conferred by the

constitution, and the latter because, under the construction now urged upon us, they can affect none if they can not affect equally all within and without their jurisdiction. Of course such a construction is inadmissible. As Mr. Justice FIELD observed in Missouri Railway Co. v. Mackey, 127 U. S. 205, "the greater part of all legislation is special, either in the objects sought to be attained by it, or in the extent of its application." The amendment does not profess to secure all persons in the United States nor all persons in the same state the benefit of the same laws. Great diversities in the character of laws may exist in two states separated by an imaginary line, and there may also be such diversities in different parts of the same state. (Missouri v. Lewis, 101 U. S. 22.)

Jurisdictional limits are an obvious and sufficient reason for lack of universal uniformity in legislation. The equality clause of the amendment does not require indiscriminate operation of state laws, but proceeds upon due consideration of the relations of persons to the state and to the legislation in question. "It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liability imposed." (Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283; Home Insurance Company v. New York, 134 U. S. 594; Hayes v. Missouri, 120 U. S. 68.)

In Barbier v. Connolly, 113 U. S. 27, it was said: "Class legislation discriminating against some and favoring others is prohibited, but legislation which in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects all persons similarly situated, is not within the amendment." Such has been the consistent holding of the supreme court. This is not the ordinary case of classification for legislative purposes. The power of a state to classify implies jurisdiction of the various objects to be classified, and the voluntary selection of some of them for inclusion within the law. Even in such cases a classification when made will be upheld whenever it is not purely arbitrary or capricious but proceeds upon some difference which has a just and reasonable relation to the purpose sought to be accomplished. (Railway Co. v. Ellis, 165 U. S. 150.) But were this a case

of classification, what line of division between corporations included and those excluded from the operation of a statute could be more clear or more necessary than that which marks the very boundary of the legislative power? A state has the right to confer corporate powers upon its own corporations, and its action can not be held in contravention of the equality clause of the fourteenth amendment merely because like corporations of the United States can not, by reason of their organic structure and the duties they owe their creator, avail themselves of them. The state of Kansas did not single out national banks as the special object of hostile or discriminative legislation, and no such conclusion can be helped out by averments of intention in a bill of complaint.

It is urged that the statute is void because the effect of its operation will impair the efficiency of the national banks as instrumentalities of the national government by attracting depositors from them to the guaranteed state banks. If this contention is sound and the statute falls, then all state legislation designed to improve banking methods and to maintain the local institutions on a sound basis and secure the depositors from loss is likewise void. Indeed it will be impossible to uphold even the creation of banking corporations by the states, for it can be said with equal if not greater reason that by merely giving them corporate existence and allowing them to enter the field of competition for business they deprive the national banks of depositors they would otherwise secure and thereby impair their efficiency. To state the proposition contended for is to demonstrate its unsoundness.

That Congress may create corporations for the execution of the powers conferred by the constitution is well settled, and the corporations so created are fitly termed agencies or instrumentalities of the government. Familiar examples are national banks for carrying on the fiscal operations of the United States, and railroads and bridges for promoting interstate commerce. (McClellan v. Chipman, 164 U. S. 347; Mercantile National Bank v. New York, 121 U. S. 138; McCullough v. Maryland, 4 Wheat. 316; Pacific Railroad Removal Cases, 115 U. S. 1; Luxton v. North River Bridge Co., 153 U. S. 525.). It is doubtful that it ever occurred to a railroad corporation chartered by Congress to urge that a state statute providing for public aid to a railroad corporation organized under the laws

of the state was void because its ultimate effect would be to create an unfair competition and deprive the former of business, thereby lessening its efficiency as a governmental agency. The contention made here is not different in principle. Congress may prescribe the powers and legislate concerning the corporations it creates, but it has never attempted to set an unalterable copy in those particulars for corporations organized under state laws.

The effect of the Kansas statute upon the business of the national banks will at the most be indirect and incidental. Whether there will be any appreciable effect at all depends upon the individual views of depositors which ordinarily are influenced by many things pertaining to banks and bankers and their methods of conducting business. There can be none in a legal sense of which a court can take cognizance in a case like this. Ground for complaint would exist if the statute had, for instance, made it an offense to deposit funds in national banks or subjected them to a higher rate of taxation than that imposed on like deposits in state institutions, or in some other perceptible way had evinced an evil and discriminating purpose, or an attempt to subject them to rules consistent with those prescribed by Congress. Davis v. Elmira Savings Bank, 161 U. S. 275, is an illustration. There a New York statute giving deposits of a certain character a preference in the distribution of assets of insolvent banks was held to be in conflict with the federal law providing for ratable dividends and therefore void when attempted to be applied to an insolvent national bank. We have not considered the merits of the guaranty plan, whether practically beneficent, experimental or illusory. Such matters are for the state legislature; our province is confined to the question whether the exercise of its power is within constitutional limits so far as the national banks are concerned. We think the objections they urge are so clearly without foundation the temporary injunction was improvidently granted.

The order is accordingly reversed.

Filed May 20, 1910.

A true copy. Attest: JOHN D. JORDAN,
[SEAL.] Clerk U. S. Circuit Court of Appeals,
Eighth Circuit.

The opinions of this court in the Oklahoma case, the Nebraska case, and the Assaria State Bank case from Kansas, are for the convenience of this court, printed here in full.

SUPREME COURT OF THE UNITED STATES.

No. 617. OCTOBER TERM, 1910.

ASSARIA STATE BANK OF ASSARIA, CITIZENS BANK OF AXTELL, *et al.*, *Appellants*,

v.

JOSEPH N. DOLLEY, as Bank Commissioner of the State of Kansas, and MARK TULLEY, as State Treasurer of the State of Kansas.

Appeal from the Circuit Court of the United States for the District of Kansas.

[January 3, 1911.]

Mr. Justice HOLMES delivered the opinion of the court.

This is a bill in equity brought by many state banks of Kansas to prevent the enforcement of the Kansas law providing for a Bank Depositors' Guaranty Fund. The defendants demurred. The circuit court, while holding the act unconstitutional, dismissed the bill on the ground that the appellants did not show that their rights under the constitution were infringed, and therefore did not state a case within the jurisdiction of the court. 175 Fed. Rep. 365, 375, 381, 382. The ground of complaint was that the law imposed certain conditions upon sharing the benefits and burdens of contributors to the guaranty fund, that the appellants would not or could not contribute, and that unless they did the effect of the law would be to drive them out of business. It was complained also that whereas theretofore the plaintiffs would have been entitled to share *pro rata* in the assets of an insolvent bank to which they had given credit, now depositors with such of their debtors as should go into the guaranty system would be preferred. Again various conditions of the scheme not affecting the plaintiffs were pointed out as unreasonable and arbitrary, and the whole act was alleged to be unconstitutional and void. There was added a charge that the act required taxation to meet the expenses of carrying out the scheme. To all this the court replied that so far as the plaintiffs were concerned, it did not appear that they could not change their condition so as to enable themselves to contribute,

and that the possible preference of other creditors was put as a pure speculation, it not being averred that any guaranteed bank indebted to any of the plaintiffs had failed, to which it might be added that the plaintiffs are free to withdraw their credits and collect their debts now. The charge as to taxation did not state a case under the constitution, and violation of constitutional rights was the only ground for coming into the circuit court.

The case of Noble State Bank v. Haskell, just decided, cuts the root of the plaintiffs' case, except so far as the Kansas law shows certain minor differences from that of Oklahoma. The most important of these is that contribution to the fund is not absolutely required. On this ground it is said, and was thought by the circuit judge, that the law could not be justified under the police power. We cannot agree to such a limitation. If, as we have decided, the law might compel the contribution on the grounds that we have stated, it may try to bring about the same result by the creation of motives less compulsory than command and of disadvantages in holding aloof less peremptory than an immediate stop. We shall not go through the details of minute criticism urged by the appellants, in most if not all of which they are in no way concerned. Perhaps the most striking of these subordinate matters is the preference of ordinary depositors over other creditors, a preference that seems to be overstated by the appellants. This, obviously, is in aid of what we have assumed to be one of the chief objects and justifications of such laws, securing the currency of checks. The ordinary deposits are those that are drawn against in that way. Another discrimination complained of is that against unincorporated banks and banks not having a surplus of ten per cent. But if the state might require incorporation it may give advantages to incorporated companies. It might provide that no banking business should be done except by corporations and that corporations should not be formed or continue with less than a surplus of ten per cent, both provisions being for the purpose of assuring safety. If instead of that it allows the plaintiff to keep on without incorporation and with a smaller surplus they can not complain that the safer banks will outstrip them as the result of the law. We think it unnecessary to discuss the case more at length.

Decree affirmed.

No. 71.

THE NOBLE STATE BANK, *Plaintiff in Error*,
v.
C. N. HASKELL, G. W. BELLAMY, J. P. CONNORS, J. A. MENEFEE, M. E. TRAPP, and H. H. SMOCK.

In Error to the Supreme Court of the State of Oklahoma.

[January 3, 1911.]

Mr. Justice HOLMES delivered the opinion of the court.

This is a proceeding against the governor of the state of Oklahoma and other officials who constitute the State Banking Board, to prevent them from levying and collecting an assessment from the plaintiff under an act approved December 17, 1907. This act creates the Board and directs it to levy upon every bank existing under the laws of the state an assessment of one per cent of the bank's average daily deposits, with certain deductions, for the purpose of creating a Depositors' Guaranty Fund. There are provisos for keeping up the fund, and by an act passed March 11, 1909, since the suit was begun, the assessment is to be five per cent. The purpose of the fund is shown by its name. It is to secure the full repayment of deposits. When a bank becomes insolvent and goes into the hands of the bank commissioner, if its cash immediately available is not enough to pay depositors in full, the Banking Board is to draw from the depositors' guaranty fund (and from additional assessments if required) the amount needed to make up the deficiency. A lien is reserved upon the assets of the failing bank to make good the sum thus taken from the fund. The plaintiff says that it is solvent and does not want the help of the guaranty fund, and that it can not be called upon to contribute toward securing or paying the depositors in other banks consistently with article I, section 10, and the fourteenth amendment of the constitution of the United States. The petition was dismissed on demurrer by the supreme court of the state. 22 Okla. 48.

The reference to article I, section 10, does not strengthen the plaintiff's bill. The only contract that it relies upon is its charter. That is subject to alteration or repeal, as usual, so that the obligation hardly could be said to be impaired by the act of 1907 before

us, unless that statute deprives the plaintiff of liberty or property without due process of law. See Sherman v. Smith, 1 Black, 587. Whether it does so or not is the only question in the case.

In answering that question we must be cautious about pressing the broad words of the fourteenth amendment to a drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees in the bill of rights. They more or less limit the liberty of the individual or they diminish property to a certain extent. We have few scientifically certain *criteria* of legislation, and as it often is difficult to mark the line where what is called the police power of the states is limited by the constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the lawmaking power.

The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. And while we should assume that the plaintiff would retain a reversionary interest in its contribution to the fund so as to be entitled to a return of what remained of it if the purpose were given up (see Receiver of Danby Bank v. State Treasurer, 39 Vt. 92, 98), still there is no denying that by this law a portion of its property might be taken without return to pay debts of a failing rival in business. Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. Clark v. Nash, 198 U. S. 361. Strickley v. Highland Boy Mining Co., 200 U. S. 527, 531. Offield v. New York, New Haven & Hartford R. R. Co., 203 U. S. 372. Bacon v. Walker, 204 U. S. 311, 315. And in the next, it would seem that there may be other cases besides the every-day one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. See Ohio Oil Co. v. Indiana, 177 U. S. 190. At least, if we have a case within the reasonable exer-

cise of the police power as above explained, no more need be said.

It may be said in a general way that the police power extends to all the great public needs. Camfield v. United States, 167 U. S. 518. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public wefare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If then the legislature of the state thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it. Even the primary object of the required assessment is not a private benefit as it was in the cases above cited of a ditch for irrigation or a railway to a mine, but it is to make the currency of checks secure, and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means for keeping money on hand. The priority of claim given to depositors is incidental to the same object and is justified in the same way. The power to restrict liberty by fixing a minimum of capital required of those who would engage in banking is not denied. The power to restrict investments to securities regarded as relatively safe seems equally plain. It has been held, we do not doubt rightly, that inspections may be required and the costs thrown on the bank. See Charlotte, Columbia & Augusta R. R. Co. v. Gibbes, 142 U. S. 386. The power to compel, beforehand, coöperation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end. Gundling v. Chicago, 177 U. S. 183, 188. So far is that from being the case that the device is a familiar one. It was adopted by some states the better part of century ago, and seems never to have been questioned until now. Receiver of Danby Bank v. State Treasurer, 39 Vermont, 92. People v. Walker, 17 N. Y. 502. Recent cases going not less far are Lemieux v. Young, 211 U. S. 489, 496;

Kidd, Dater and Price Co. v. Musselman Grocer Co., 217 U. S. 461.

It is asked whether the state could require all corporations or all grocers to help to guarantee each other's solvency, and where we are going to draw the line. But the last is a futile question, and we will answer the others when they arise. With regard to the police power, as elsewhere is the law, lines are picked out by the gradual approach and contact of decisions on the opposing sides. Hudson County Water Co. v. McCarter, 209 U. S. 349, 355. It will serve as a datum on this side, that in our opinion the statute before us is well within the state's constitutional power, while the use of the public credit on a large scale to help individuals in business has been held to be beyond the line. Loan Association v. Topeka, 20 Wall. 655. Lowell v. Boston, 111 Mass. 454.

The question that we have decided is not much helped by propounding the further one, whether the right to engage in banking is or can be made a franchise. But as the latter question has some bearing on the former and as it will have to be considered in the following cases, if not here, we will dispose of it now. It is not answered by citing authorities for the existence of the right at common law. There are many things that a man might do at common law that the states may forbid. He might embezzle until a statute cut down his liberty. We can not say that the public interests to which we have adverted, and others, are not sufficient to warrant the state in taking the whole business of banking under its control. On the contrary we are of opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe. In short, when the Oklahoma legislature declares by implication that free banking is a public danger, and that incorporation, inspection and the above-described coöperation are necessary safeguards, this court certainly can not say that it is wrong. North Dakota v. Woodmansee, 1 North Dakota, 246. Brady v. Mattern, 125 Iowa, 158. Weed v. Bergh, 141 Wis. 569. Commonwealth v. Vrooman, 164 Pa. 306. Myers v. Irwin, 2 S. & R. 368. Myers v. Manhattan Bank, 20 Ohio, 283, 302. Attorney General v. Utica Insurance Co., 2 Johns. Ch. 371, 377. Some further details might be mentioned, but we deem them unnecessary. Of course objections under the state constitution are not open here.

Judgment affirmed.

No 445.

ASHTON C. SHALLENBERGER, Governor of the State of Nebraska; SILAS R. BARTON, Auditor of Public Accounts of the State of Nebraska, *et al.*, *Appellants*,

v.

THE FIRST STATE BANK OF HOLSTEIN, NEBRASKA, *et al.*

Appeal from the Circuit Court of the United States for the District of Nebraska.

[January 3, 1911.]

Mr. Justice HOLMES delivered the opinion of the court.

This is a suit by many banks to prevent the Banking Board of Nebraska from carrying out and enforcing an act similar to the Oklahoma statute just passed upon. It forbids banking except by a corporation formed under the act and provides for a guaranty fund The circuit court held the statute unconstitutional and issued an injunction against the enforcement of it. 172 Fed. Rep. 999. For the reasons given in the foregoing case the decree of the circuit court must be reversed.

Decree reversed.

In our opinion the two decisions just quoted entirely and fully answer every question raised by counsel in their brief or that can be raised in oral argument, and we feel like apologizing to the court for the citation of other authorities or further argument in the case; but inasmuch as counsel for complainants have again argued fully in their brief the same questions which have been presented over and over in these several suits, we submit to the court the following result of our research:

COMPLAINANTS DO NOT SHOW AN INTEREST, THE NATURE OF WHICH ENTITLES THEM TO QUESTION THE CONSTITUTIONALITY OF THE STATUTE ATTACKED BY THEM.

The bill avers that national banks can not be admitted to the benefits of the law, and that, therefore,

the state law discriminates against them by giving the state banks, which can participate, an advantage in business.

No private property right in either case is infringed by the law, unless it be that under the operation of the several classes of banks allowed by this law one class will have the advantage over the other in business. This is a matter which appeals purely to the business judgment of men. It is a question over which there is much difference of opinion, and is, therefore, one which must be determined solely by the legislature of the state. The legislature of Kansas did not go so far as to attempt a solution of the question absolutely for all men, but left it open for each bank and class of banks to decide for themselves. In other words, this is a question concerning the political or governmental policy of the state upon a matter within the police power, and it presents no injury to the private property rights of the complainants which entitles them to relief in a court of equity.

No attempt at an exhaustive discussion of this elementary principle will be made. We shall be content to call the attention of the court to pertinent quotations from well-known cases upon this proposition.

In the famous case of Marbury v. Madison, 1 Cranch. 137, the court said:

"A legal remedy by suit in equity or by action at law is available whenever a legal right is invaded."

The question of what constitutes a legal right, so as to enable a party to complain of a statute as unconstitutional, has often been the subject of determination by the courts.

The rule as gleaned from all of these decisions is stated in Cyclopedia of Law and Procedure, volume 8, page 787, as follows:

"It is a firmly established principle of law that no one can be allowed to attack a statute as unconstitutional who has no interest in it, and is not affected by its provisions. This rule applies to all cases both at law

and in equity and is equally applicable in both civil and criminal proceedings. All constitutional inhibitions against the taking of private property without due process of law, and all constitutional guarantees of equal rights and privileges are for the benefit of those persons only whose rights are affected and can not be taken advantage of by any other persons."

With respect to discriminations this work continues:

"The denial of equal rights and privileges by discriminatory legislation can be pleaded only by those who can show that they belong to the class discriminated against. This has been held in numerous cases, and the rule applies to all cases affecting civil cases of every kind and to all cases in which property rights alone are affected."

In the case of The State v. Smiley, 65 Kan. 240, Chief Justice DOSTER used the following language:

"He (the defendant) can not be heard to object to the statute merely because it operates oppressively upon others. The hurt must be to himself. The case, under appellant's contention as to this point, is not a case of favoritism in the law. It is not a case of exclusion of classes who ought to have been included, the leaving out of which constitutes a denial of the equal protection of the law, but it is the opposite of that. It is a case of the inclusion of those who ought to have been excluded. Hence, unless appellant can show that he himself has been wrongfully included in the terms of the law, he can have no just ground of complaint. This is fundamental and decisively settled."

This case was appealed to this court and there affirmed (Smiley v. Kansas, 196 U. S. 447), and Mr. Justice BREWER, who wrote the opinion, incorporated into it with approval the part of Justice DOSTER'S opinion quoted above, and cited—

Clarke v. Kansas City, 176 U. S. 114.

Albany Co. v. Stanley, 105 U. S. 305.

Pittsburg *et al.* v. Montgomery, 152 Ind. 1.

In nearly all of the cases in which similar questions have been considered by this court the suits were started in the state courts and came to this court by way of the state supreme court, and the question was, there-

fore, one which involved the twenty-fifth section of the judicial act of the United States and a construction of the meaning of the words "where the validity of a statute or authority has been drawn in question in a suit in the state court."

It was contended, therefore, that where the state court had considered the question, the federal supreme court was bound to do so on appeal. Notwithstanding this point, which would have been construed more favorably to the complainants in this case than the simple question as to what constitutes a private right or injury necessary to sustain a legal proceeding, all of the decisions of this court adhere to the proposition that a private interest in the subject of the act must exist in the complainant before he can maintain the suit.

In Tyler v. The Judges of Registration, 179 U. S. 405, the court says:

"The objection that persons may be deprived of their rights without due process of law under the Massachusetts Torrens act for land registration, because it provides for adjudicating the rights of certain classes of persons who are notified only by posting notices, registered letters, or publication, and for the registration of dealings with the land after the original registration, can not be raised, so as to give jurisdiction on writ of error by the supreme court of the United States, by a person who is not affected by these provisions of the act because he has the requisite notice."

The facts in this case sufficiently appear from the part of the syllabus quoted. Mr. Justice BROWN said, in part:

"The very first general rule laid down by Chitty, Pl. p. 1, is that 'the action should be brought in the name of the party whose legal right has been affected, against the party who committed or caused the injury, or by or against his personal representative.'

. . . . . .

" 'A plaintiff can not properly sue for wrongs that do not affect him, and, on the other hand, a person is not properly made a defendant to a suit upon a cause of

action in which he has no interest, and as to which no relief is sought against him.'

. . . . . .

"Actions instituted in this court by writ of error to a state court are no exception to this rule. In order that the validity of a state statute may be 'drawn in question' under the second clause of section 709, Revised Statutes, it must appear that the plaintiff in error has a right to draw it in question by reason of an interest in the litigation which has suffered, or may suffer, by the decision of the state court in favor of the validity of the statute. This principle has been announced in so many cases in this court that it may not be considered an open question.

. . . . . .

"It is true that under the third clause of section 709, where a title, right, privilege or immunity is claimed under federal law, such title, etc., must be 'specially set up or claimed,' and that no such provision is made as to cases within the second clause, involving the constitutionality of state statutes or authorities, but it is none the less true that the authority of such statute must 'be drawn in question' by some one who has been affected by the decision of a state court in favor of its validity, and that in this particular the three clauses of the section are practically identical.

"As we had occasion to observe in California v. San Pablo & T. R. Co., 149 U. S. 308, 314, 37 L. Ed. 747, 749, 13 Sup. Ct. Rep. 876, 'the duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property, which are actually controverted in the particular case before it. When, in determining such rights, it becomes necessary to give an opinion upon a question of law, that opinion may have weight as a precedent for future decisions. But the court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which can not affect the result as to the thing in issue in the case before it. No stipulation of parties or counsel, whether in the case before the court or in any other case, can enlarge the power or affect the duty of the court in this regard.' See, also, Lord v. Veazie, 8 How. 251, 12 L. Ed. 1067; Cleaveland v. Chamberlain, 1 Black. 419, 17 L. Ed. 93; Kimball v. Kimball, 174 U. S. 158, 43 L. Ed. 932, 19 Sup. Ct. Rep. 639."

In the case of Clarke v. Kansas City, 176 U. S. 114, cited by Justice BREWER in the Smiley case, the statute of the state of Kansas was questioned which provided for the annexation of lands to a city, but which also provided that the provisions of the statute should not apply to agricultural lands, unless such agricultural lands were owned by a railroad company. The receivers of the Union Pacific Railway Company claimed this discriminated against railroad companies and denied to them the equal protection of the laws. The supreme court of Kansas declined to hear the case because the petition did not show that the railroad was the owner of agricultural lands. This court affirmed the decision, saying, in part:

"Owning no agricultural land, the defendants in error are not affected by the discrimination which the statute makes between the different classes of owners of such kind of land, and they can not, therefore, be heard to complain on that score. 'A court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect and who has therefore no interest in defeating it.' (Cooley, Const. Lim., 6th ed., 196; Albany County Supers. v. Stanley, 105 U. S. 305, 26 L. Ed. 1044.)

"We concur in this view, and it would be difficult to add anything to its expression. The discrimination occurs only in a particular use of the lands, and it would seem obvious that such use must be shown to make a cause of action—a right infringed and to be redressed If the lands of the plaintiff belonged to an individual they would be subject to the statute. Where, then, is the discrimination? In that, it is claimed, if the lands were used for agriculture, being owned by a corporation, they would be subject to the statute, but would not be if owned by an individual. But that is not a discrimination immediate and actual against plaintiff in error. It does not now, and there is nothing in the record to show that it ever will, exist. Not a law alone, but a law and its incidence, are necessary to a justiciable right or injury; and it therefore follows if plaintiff has a grievance under the statute which this court can redress it comes from the discrimination between agricultural lands and other lands—a cause of action, not because

the plaintiff is a corporation, but because it is an owner of such lands and one which it would have even if it were an individual."

Another case cited by Justice BREWER in the Smiley case was Pittsburg *et al.* v. Montgomery, 152 Ind. 1, which involved the validity of a statute making railroad companies liable for the negligence of their employees resulting in the injury of employees. The Kansas decisions on a similar statute were cited with approval. The ground of objection was that municipal corporations were not included under the terms of the statute as well as railroad companies. The court said in part (page 14):

"Objection is made to the validity of the act because it embraces all corporations except municipal, and that there are other corporations whose business may be such as not to afford any reasonable ground for their classification, in that their business may not be peculiarly dangerous to life and limb, like that of railroads. To this it may be answered, if the act is valid as to railroad companies, the appellant, a railroad corporation, can not be permitted to litigate the constitutionality of the act as to other corporations: Henderson v. State, 137 Ind. 552; Board, etc., v. Reeves, 148 Ind. 467; Currier v. Elliott, 141 Ind. 394. It will be time enough to decide its validity as to other corporations when any of them come before this court with a case presenting the question."

The remaining case cited by Mr. Justice BREWER in the Smiley case was Supervisors of Albany Co. v. Stanley, 105 U. S. 305. This was a case involving the validity of a state taxing law in which it was claimed that the statute was in conflict with the fourteenth amendment and the national banking act because it did not allow a deduction for the debts of a bank from the assessed valuation as found by the local assessors. The bill of the plaintiff did not disclose that the bank bringing the suit had any debts which could be so deducted if the statute had conformed to the act of Congress, and the court said:

"It would seem that if the act remains a valid rule

of assessment for shares of state banks, and for individual bankers, it should also remain the rule for shareholders of national banks who have no debts to deduct, and who could not, therefore, deduct anything if the statute conformed to the requirements of the act of Congress.

"It is very difficult to conceive why the act of the legislature should be held void any further than when it affects some right conferred by the act of Congress. If no such right exists, the delicate duty of declaring by this court that an act of state legislature is void is an assumption of authority uncalled for by the merits of the case and unnecessary to the assertion of the rights of any party to the suit."

It is clear then from this case that where the legislation does not directly affect the property rights of the complainants they have no standing in court.

If a party will not be heard to complain of an unconstitutional statute because he does not bring himself within its constitutional provisions, he could not be heard to complain of a statute which upon its face offers to leave him entirely alone and not to interfere with his business in the slightest degree. The statute in question offers to all incorporated banks the right to participate in the fund upon reasonable conditions, and to all those who do not care to comply with those conditions, including national banks, if such banks are allowed by the federal authorities to take advantage of the offer, the law says, You may enter if you desire, but if not, you may go your way in peace.

It is answered by the complainants that the law will give to those banks which are admitted more favorable business conditions than it would leave for those who do not enter the fund, and to national banks; that this will injure the business of each bank, and that one bank could complain or all of the banks may complain jointly, and that what they complain of is a general injury to the business of national banks and certain state banks.

First, it may be said that no one has a right to complain because some regulation within the police power

of the state may reflect injuriously upon his business. Such a contention would avoid all of the license and inspection laws and other attempted regulations of public businesses. As to national banks, what duty rests upon the state to provide for their prosperity? It is urged that their organization and control is wholly within the powers of Congress, and certainly so far as Congress has exercised this power this must be admitted to be true. Congress has undertaken to protect national banks against certain acts of the state, and as to all other matters the national banks must take their chances with state banks and individuals engaged in local business within states.

The case of Supervisors v. Stanley, *supra*, well illustrates this proposition. Here section 5219, Revised Statutes of the United States, was directly involved, and it is apparent that the purpose of Congress in providing for the equal taxation of national banks with that of the moneyed institutions of the state was to prevent the state from taxing such institutions out of existence. As was said in National Bank v. Mayor, 100 Fed. 29:

"The policy and purpose of Congress was to protect the instrumentalities created by it from unfair competition by requiring that all persons engaged in like business should pay upon the capital so employed a like and equal rate of taxation."

This, however, is as far as Congress cared to go in attempting to protect the local business of the national bank. Indeed, this court, in the case of Easton v. Iowa, 188 U. S. 234, a case much relied upon by complainants, said:

"But we are unable to preceive that Congress intended to leave the field open for the states to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities."

Therefore it can be said with assurance that the welfare and prosperity of national banks depends upon the acts of Congress, and not upon any laws of the states. If the courts were to go further and say that the states may not regulate their own banks for fear of reflecting injuriously upon national banks, it would be as well to say that the whole authority to regulate state banks was by the national banking act conferred upon Congress. We know that such is not the rule, and that state laws affecting state banks more or less favorably than the provisions of the national banking act are from time to time enacted by the states.

At the present time, in Kansas, attention may be called to the fact that the surplus and reserves required by the state banking law do not conform to the requirements of the national banking act. The state banking law permits the state banks to loan money upon real-estate security, and in many parts of the state it is a matter of common knowledge that the majority of the loans in amount are made upon real-estate security, yet under the national banking act national banks are not allowed to accept such security, and it follows that in certain portions of Kansas where real estate is a security more frequently offered than any other national banks are exceedingly scarce. If the national banks have a right to bring this suit, we may expect a suit immediately to enjoin all state banks from operating in the western part of Kansas, in order that the national banks may have an equal opportunity to loan money in those localities.

Indeed, it has been held by this court (Bank v. Pa., 167 U. S. 461) that discriminations can not be complained of where the want of uniformity is the result of the deliberate actions of those complaining of it.

The state of Pennsylvania, in the year 1891, passed a law by which it gave to the different banks doing business within the state the privilege of collecting from their stockholders a tax of eight mills on the dollar of the face value of the capital stock of the bank,

and putting it into the state treasury, in lieu of all tax assessments, and further providing that, in case they did not elect to collect the eight mills taxes from the stockholders, the uniform tax of four mills on the dollar should be levied upon the actual cash value of the capital stock of all banks doing business in the state.

In 1895 the validity of this law was before the supreme court of Pennsylvania, in the case of Commonwealth v. Merchants & Manufacturers National Bank, 168 Pa. St. 309, 31 Atl. 1065, and the law was there upheld. In the body of the opinion Mr. Justice WILLIAMS, speaking for the court, says:

"It proposes to relieve all the banks from local taxation that elect to pay a certain rate per cent upon their shares of stock directly into the state treasury. All the banks may come into this class. All that do are assessed with a uniform rate per cent, which they pay at one time and one place. Those that elect not to pay this rate are assessed at a lower and uniform rate upon the appraised value of their shares, and upon this valuation the local as well as the state taxes are assessed. We can not say that this classification is unconstitutional, nor that the rate per cent differs so widely as to invalidate the law. The rate is uniform for each class, and the aggregate of the taxes levied per share in both classes is as nearly the same as could well be estimated in advance of the action of the local authorities, which it is impossible to forecast with accuracy. The banks are themselves responsible for the existence of the second class. They are all invited to deal directly with the state. If they do not, it is fair to assume that their action is guided by what they believe to be their own pecuniary interest. Of a want of uniformity, which is the result of their own deliberate action, they certainly ought not to complain. Of a want of equality of burden that results from circumstances affecting particular banks, and is not produced by the application of the law, they cannot complain. We think the learned judge decided this case correctly, and the judgment is now affirmed."

This case was afterward before this court by appeal, and is entitled "Merchants & Manufacturers Bank v. Pennsylvania, 167 U. S. 461, 18 Sup. Ct. Rep. 221,"

and there the constitutionality of the law under the equal protection clause of the fourteenth amendment to the federal constitution was raised and decided. The opinion in the case was delivered by Mr. Justice BREWER. In the syllabus the court said:

"There is no lack of uniformity of taxation under that act which renders it obnoxious to that part of the fourteenth amendment to the federal constitution which forbids a state to 'deny to any person within its jurisdiction the equal protection of the laws,' as the right of election which, if not availed of by all, may produce an inequality, is offered to all.

"That act treats state banks and national banks alike; gives to each the same privilege; and there is no discrimination against national banks as such."

In the opinion the learned judge says:

"Again, it will be perceived that this inequality in the burden results from a privilege offered to all."

And further on, in the opinion—

"The legislation before us treats state banks and national banks alike; gives to each the same privileges; and there is no discrimination against national banks as such."

This statement was brought out in consideration of the equality clause of the fourteenth amendment, and also of section 5219, Revised Statutes of the United States, providing for the equal taxation of the stock of national banks in the state with that of other moneyed institutions.

It seems to us on principle that no question of discrimination or lack of equal protection under the law could be raised where the right to take advantage of the privileges or accept the burdens imposed by the law is voluntary so that the different institutions belonging to the class may or may not, as they see fit, avail themselves of the privileges or assume the burdens granted or imposed by law. The principle was so tersely and plainly laid down in the syllabus in the case in this court that there can be no controversy between these complainants and the state of Kansas as to the

right of the state to continue the operation of the bank guaranty law.

Besides all this, the principle is universally recognized that one who is not injured as to his private interests may not bring a suit to test the constitutionality of a law for the benefit of the public generally. One may not enjoin an illegal tax unless he suffers pecuniary loss from the tax, or he may not enjoin a public nuisance unless the nuisance causes his private property or rights to suffer a substantial loss.

As bearing upon this discussion, it will be noted that in one part of their bill complainants seriously allege an injury to their business interests arising out of the more favorable terms upon which guaranteed banks will be allowed to transact business. In the latter part of their bill they allege that the law is a fraud upon the public, the security offered is insufficient, and will result in harm and disaster to the banks which undertake to comply with its provisions. Upon which of these inconsistent statements do the complainants stand? Are they seeking to enjoin the law because of some injury to their property interest, or are they seeking to enjoin it for the good of the public generally? If they can not agree among themselves, or with themselves, as to the result of this loss, how do they expect the court to settle such a question with a certainty necessary to determine and direct judicial action?

"Alleging inconvenience to private parties in common with the public in general, occasioned by the exercise of a right conferred by law for the benefit of the public, gives them no right to damages."

Hamilton v. Vicksburg S. P. R. Co., 119 U. S. 280.

On this branch of the case we call the attention of the court also to the following authority:

Turpin v. Lemon, 187 U. S. 51. (Opinion, p. 60.)

"This is an effort to test the constitutionality of a law without showing the plaintiff had been injured by its application." (Branton Co. Ct. v. W. Va., 208 U. S. 192.)

THE REAL QUESTION INVOLVED IN THIS CASE IS THE QUESTION OF WHETHER OR NOT A STATE HAS THE RIGHT TO PASS A LAW CONTROLLING ITS OWN CORPORATE CREATURES.

The reasoning of the trial court, upon which the conclusion is based, is to the effect that because the United States has created national banks and given them authority to do business under federal laws within the states, therefore no state has any right to pass any law that would in any way give to a bank created by the state any advantage in business over the national bank. To state the proposition tersely, *if a state can devise a banking law or system which is better than the national banking law, is there anything in the national constitution that will prevent it from doing so?* In other words, is the passage of a law by the federal government, for the regulation of its corporations, a limitation upon the powers of a sovereign state to legislate upon the same subject for the control of its corporations?

If this is true, then if Congress passes laws controlling corporations created by it, such as the Pacific Railroads, every state would have to conform to and make laws of the same kind for the control of their railroad corporations doing business in the states where the Pacific Railroads are. As a legitimate result of this reasoning, the states would be, under this clause of the fourteenth amendment guaranteeing the equal protection of the laws, bound to make such laws only for the control of their corporations as were made by Congress for the control of its corporations.

In this connection, we desire to emphasize the very pertinent statement by the circuit court of appeals in its decision in this case, at the bottom of page 463 of volume 179, Federal Reporter, wherein the court said:

"The fourteenth amendment provides that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.' A conclusive answer to the objection to the Kansas statute now being consid-

ered would seem clearly to appear from the face of the amendment itself. A most extraordinary condition would exist if the legislation of the states properly confined within its appropriate sphere were to be held invalid because it does not extend to and embrace objects beyond their jurisdiction. A legislative *impasse* would be created. Neither the nation nor the states could move forward, the former because power over matters purely of state concern is not conferred by the constitution, and the latter because, under the construction now urged upon us they can affect none if they can not affect equally all within and without their jurisdiction. Of course such a construction is inadmissible."

Further on in the same opinion the court said:

"A state has a right to confer corporate powers upon its own corporations, and its action can not be held in contravention of the equality clause of the fourteenth amendment merely because like corporations of the United States can not, by reason of their organic structure and the duties they owe their creator, avail themselves of them. The state of Kansas did not single out national banks as the special object of hostile or discriminative legislation, *and no such conclusion can be helped out by averments of intention in a bill of complaint.*"

Following further in the opinion, the court said:

"It is doubtful that it ever occurred to a railroad corporation chartered by Congress to urge that a state statute providing for public aid to a railroad corporation organized under the laws of the state was void, because its ultimate effect would be to create an unfair competition and deprive the former of business, thereby lessening its efficiency as a governmental agency."

In briefs heretofore filed by counsel for appellants complaint has been made and insisted upon that the act itself should be held unconstitutional, because complainants assume to see in the wording of section 4 of chapter 61, Session Laws of Kansas, 1909, an unequal and discriminatory distribution of the assets of insolvent state banks under this guaranty act. This con-

tention arises from the reading of section 4, at about the center thereof, as follows:

"After the officer in charge of the bank shall have realized upon the assets of such bank, and exhausted the double liability of its stockholders, and shall have paid all funds so collected in dividends to the *depositors*, he shall certify all balances," etc.

The complainants have at all times claimed that the use of the word "depositors" in the above quotation made an unequal and unlawful distribution of the assets. In briefs heretofore written in these cases, and in the oral argument before the circuit court and the circuit court of appeals it has been pointed out to the court that the different sections of the Kansas banking laws, taking the unrepealed portions of the original banking law together with this chapter 61, that the word "depositors" as there used in section 4 was unintentional and that the assets of the bank would be distributed *pro rata* among the creditors thereof, as already provided in the banking act.

Notwithstanding these statements and these constructions, the complainants continue to insist that they are discriminated against by reason of that provision. For the purpose of making that certain which might have been rendered uncertain by the unintentional misuse of the word "depositors," the legislature of Kansas, 1911, amended section 4 of chapter 62 of the Session Laws of 1911, so that the paragraph above quoted now and for the last two years has read as follows:

"After the officer in charge of the bank shall have realized upon the assets of such bank, and exhausted the double liability of its stockholders, and shall have paid all funds so collected in dividends to the *creditors*, he shall certify all balances," etc.

This court in its opinion in the Assaria State Bank case, *supra*, upon this subject uses this language:

"We shall not go through the details of minute criticism urged by the appellants, in most if not all of which they are in no way concerned. Perhaps the most strik-

ing of these subordinate matters is the preference of ordinary depositors over other creditors, a preference that seems to be overstated by the appellants. This obviously is in aid of what we have assumed to be one of the chief objects and justifications of such laws—securing the currency of checks."

Notwithstanding the opinion of this court on that subject, which was rendered two years ago, notwithstanding the fact that the legislature of Kansas has seen fit to change the word "depositors" to "creditors," counsel for appellants in their brief filed in this case still insist that national banks are discriminated against by reason of the unequal distribution of the assets of an insolvent state bank. This has no basis either in fact or in law, and, as this court said, the position is entirely "overstated."

The appellants insist here that section 13 of the banking law is void and unconstitutional, because they claim that the national banks can not participate in the bank guaranty law, and claim that the legislature knew of this inability, and therefore knew that section 13 would be unconstitutional. In speaking of this section at one time Mr. Attorney-general Wickersham denominated it "an invitation to the national banks to participate in this fund." We desire to call the court's attention to the fact that, as an abstract proposition, an invitation or request can not in itself be void. It may be inoperative, but the fact of its being inoperative rests, not with the person extending the invitation, but with the person invited; and although the party invited, for reasons sufficient to himself, may not or can not accept the invitation, that fact can not operate against the validity or good faith of the invitation itself.

If national banks may not be permitted to operate under the guaranty law as set out in chapter 61, it is not by reason of anything inherently wrong in the law itself, but the reason must be found in the controlling power to which national banks are subject, and which is independent of any power of the state, and a power

to which they have voluntarily submitted themselves. In other words, it must be by reason of the control exercised over them by the comptroller of the currency, under the provisions of the national banking act. If it be true that national banks will not be permitted to participate in this fund by reason of some infirmity or lack of power in the national bank act, that, in itself, would not operate to void the provisions of the law relative to state banks. We take it as an admitted fact that Congress has no power delegated to it by which it may control the power of the state to oversee the operation of state banks, and by which it can control in any way the provisions of a state law adopted in the exercise of its right of control over its own domestic banks. If Congress may not do that by a direct enactment, it can not do so by an indirection.

At pages 6 to 15, inclusive, of their brief, counsel for appellants make copious quotations from the bill of complaint. An examination of paragraphs taken from the bill of complaint, as set out in pages 6, 7, 8, 9, 10 and 11, will show that they are largely and almost entirely complaints relative to the question of equal protection under the law, and claiming that under the reading of section 4 of the bank guaranty act the guaranteed depositors of an insolvent bank will be paid in full from all of the assets of the bank before any other creditor. These claims are made notwithstanding the decision of this court which has upheld such a classification, and also notwithstanding the fact that the state of Kansas, in its wisdom and in developing a banking business of the state through its legislature, became of the opinion that the banking interests of the state would be better safeguarded by changing the word "depositors" to "creditors," as heretofore stated, so that under the law as it now exists, and under the law as it has existed for two years last past, all of the assets of the bank, including the double liability of the stockholders, is used and expended in the payment of *all* creditors, and the only funds used exclusively for depositors are

those moneys which are collected into the guaranty fund by assessment under the guaranty law and which are expended for the payment of the guaranteed depositors under the classification as set forth in the act.

We, therefore, do not deem it necessary to further cite authorities or burden the court with further arguments upon that question. It seems to us it is fully and completely answered by the decision of this court.

On page 11 of their brief counsel advance the idea, taken from the bill of complaint, that the act itself enables and authorizes the guaranteed banks to advertise the fact, and that by so doing they will induce the depositors in national banks to leave the national banks and come to the state banks with their deposits, and, as stated in the complaint,

"therein and thereby to wrongfully discriminate against and to deplete and diminish the deposits in banks not under the guaranteed system, and to the advantage of the banks which are in the guaranteed system, and as against all banks which can not under the terms of the act go into said guaranty system, including national banks."

The bill of complaint, as set out on page 11 of the brief, further says that by reason of the facts above set forth the act is unconstitutional and void, and that it constitutes an unlawful and unreasonable discrimination in favor of state banks. They might as well say that because a state bank was fortunate in procuring a better cashier than a rival national bank, who, by his enterprise, progressiveness and forcefulness, builds up the state bank to the deteriment of the national bank, that a court of equity might in the exercise of its protective power over the weaker national bank restrain the state bank from employing so able a managing officer.

In the bill of complaint, at paragraph 9 (rec. 13), and copied in complainants' brief at page 10, the following averment appears:

"And that in case the law remains in force and effect, banks which may not accept the provisions of said law

will be forced to *cease doing business*, for the reason that *all or a large part* of their deposits will be withdrawn, and will *be forced to wind up their business* or to reincorporate in such a way as to entitle them to the benefits of said law, if any such benefits there be."

The two statements copied from the bill of complaint depict a deplorable condition in the banking business of Kansas. This court will take knowledge of the fact that this law has now been in force since July, 1909; that until January 3, 1911, the matters involved in the guaranty act were in litigation. There was an atmosphere of uncertainty surrounding the law and surrounding the situation of said banks. On January 3, 1911, this court handed down its opinion in the Oklahoma and Nebraska cases, and in the case of Assaria State Bank against these appellees, in which decisions the bank guaranty law of each state was upheld, and an impetus was then given to the banking business in Kansas. If counsel who wrote and still insist upon the above libel upon the national banks of our state will put their finger upon that averment in that complaint and start out in Kansas to find the national bank or banks which answer their description therein, they will travel from one end of the state to the other, from north to south and from east to west, and fail utterly to find any such national bank.

The court will find breathing all through the bill of complaint the idea that the bank guaranty law of Kansas, by reason of its wisdom, by reason of its superior provisions, will draw from the national banks all of their deposits and require them finally to surrender their charters as national banks. They depict a deplorable condition in the banking business of Kansas.

The experience of the banking business in Kansas, for something over two years while this law has been in full force and effect, is exactly contrary to the wailings contained in the bill of complaint. There are no less national banks in the state of Kansas to-day than

there were when the law was upheld by this court, January 3, 1911. National banks have largely increased deposits now as compared with deposits when this law went into effect. The deposits in state banks are largely increased. In fact, never in the history of Kansas has the banking business been more prosperous, never has it been more safe, and never has it held the confidence of the people as it has since the bank guaranty law of Kansas went into effect.

We do not believe, even if every word contained in the bill of complaint relative to the advantages to state banks and the disadvantages to national banks was true, that this court would say because a sovereign state had devised a banking plan which was safer and better than that devised by the national government, and under which the people of the state were entirely satisfied, and in which they reposed their entire confidence, that for that reason the banking laws and banking system of such state should be torn down for the purpose of building up a few weak and mismanaged government agencies denominated "national banks."

These things are not true in Kansas. National banks of the state of Kansas have the entire confidence of the people. There have been no disastrous failures, either of national banks or state banks, since this law went into effect. Why then should the banking system of a great state like Kansas be disturbed when the experience of over two years shows that its only effect has been to build up the confidence of the people in both state and national banks?

In their brief and in the original bill of complaint counsel for the appellants have complained very largely of the classifications made in the bank guaranty act. It goes without saying that in an act of this kind there are many classifications as to the kind of banks, the amount of capital stock, amount of surplus, kind of deposits, whether otherwise secured or not, and a great many classifications of the institutions

and deposits, which might come under and receive the benefit of the guaranty provisions of the act.

In the bill of complaint counsel selected out nearly every one of these classifications and complained that they were discriminatory against national banks and were therefore null and void. Pages of the bill of complaint are taken up with complaints of these classifications. In section 6 of the act will be found the classifications as to the different kinds of depositors, and the first classification is, "deposits which do not bear interest." This classification takes the great bulk of the deposits in banks which are intended to be used from day to day in the commercial transactions of the business world. It is the blood running through the arteries of commerce which, if it is obstructed, obstructs the stream of commerce, and obstructs not only the banking business, but every class of business in the community is affected by the stagnation. These deposits which are placed under the protection of the guaranty provisions of the act are the daily deposits which the merchant uses in paying his bills, without which he could not successfully conduct his business. They are the deposits which the professional man, farmer, laboring man, and in fact every class of individuals and corporations use in the daily transaction of their business, and include almost the entire bulk of the active earning money belonging to the people; and why should they not be protected and guaranteed? They are the deposits against which the checks are drawn from day to day.

Toward the latter end of the opinion in the Kansas case, above set out in full, this court says:

"We shall not go through the details of minute criticisms urged by the appellants, in most if not all of which they are in no way concerned. Perhaps the most striking of these subordinate matters is the preference of ordinary depositors over their creditors—a preference that seems to be overstated by the appellants. This, obviously, is in aid of what we have assumed to be one of the chief objects and justifications

of such laws—*securing the currency of checks.* The ordinary deposits are those that are drawn against in that way."

We deem it unnecessary to take up all of the classifications complained of in the bill of complaint. In fact we deem it unnecessary to take up any more of them. We have made research along the line of decisions of this court and state courts upon the question of proper classifications. In the case of Heath and Milligan Mfg. Co. v. Worst, 207 U. S., at page 354, in the opinion this court says:

"We have declared many times and illustrated the declaration that classifications must have relation to the purpose of the legislature. But logical appropriateness of the inclusion or exclusion of objects or persons is not required. The classification may not be merely arbitrary, but necessarily there must be a great freedom of discretion, even though it result in ill-advised, unequal and oppressive legislation."

(Citing Mobile Co. v. Kimball, 102 U. S. 691.)

In Ozan Lumber Co. v. Union Co. Nat'l Bank, 207 U. S. 256, in the opinion of this court Mr. Justice PECKHAM says:

"It is almost impossible, in some matters, to foresee and provide for every imaginable and exceptional case, and a legislature ought not to be required to do so at the risk of having its legislation declared void."

Citing Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 150. M., K. & T. R. Co. v. May, 194 U. S. 267.

In the regulation of its state banks the state has a right to make such classifications as in its opinion will be to the best interests of the banking business and will create the greatest confidence on the part of the public, which forms the great mass of the depositors in these banks; and when the state has so acted, the question is not whether it has passed the very best law that could be passed upon this subject, but is it acting reasonably and are the classifications related to the purpose of the legislation? These classifications need not be artistic or scientific. All legislation of a public

nature is filled with classifications and has been upheld in nearly every state in the Union. This court has upheld it repeatedly.

See: The People v. Naglee, 1 Cal. 232.

A., T. & S. F. R. Co. v. Matthews, 174 U. S. 106.

Insurance Co. v. Daggs, 172 U. S. 562.

Mutual Life Insurance Assn. v. Mettler, 85 U. S. 325, in which the court said:

"A classification to be obnoxious must be arbitrary and destitute of reasonable basis. Any classification in which a reasonable mind might find a fair interest, or fair reason therefor, is surely not outside of reasonable basis."

There are many other cases bearing upon this subject which have come under our research which we do not deem necessary to call to the attention of the court.

Upon the question of this being the exercise of police power of the state, we do not think it necessary to more than quote a few words from the opinion of this court. In the Kansas case, when it was before the court, this court said:

"The case of Noble State Bank v. Haskell just decided cuts the root of the plaintiff's case, except so far as the Kansas law shows certain minor differences from that of Oklahoma. The most important of these is that contributions to funds is not absolutely required. On this ground, it is said, and was thought by the circuit judge, that the law could not be justified under the police power. We can not agree to such a limitation. If, as we have decided, the law might compel the contribution on the grounds that we have stated, it may try to bring about the same result by the creation of motives less compulsory than command and of disadvantages in holding aloof less peremptory than an immediate stop."

Before leaving entirely the question of classification, so largely complained of by the appellants, we desire to observe that classifications in the banking business are made, not by the state, but by the customers, or the people doing business with the various banks. For instance, certain customers deposit their

money in the bank subject to check, thus creating that class; others take certificates of deposit, and another class is made; others deposit in the savings department, and so on through all of the classifications that are afterwards simply recognized by the state. The business public make and create these different classes. The state in its legislation upon the banking business recognizes these classes. It recognizes a condition, and by its legislation refuses to disturb classifications made by the business public. This recognition of the classifications by the state and fitting the law to each class as in the wisdom of the state is deemed best can in no way operate upon the validity of the law as a state system of banking.

The circuit court of appeals in its opinion in this case, speaking of the effect of the Kansas guaranty act upon the business of national banks, uses this language:

"The effect of the Kansas statute upon the business of the national banks will at the most be indirect and incidental. Whether there will be any appreciable effect at all depends upon the individual view of depositors, which ordinarily are influenced by many things pertaining to banks and bankers and their methods of conducting business. There can be none in a legal sense of which a court may take cognizance in a case like this."

It seems to us a further discussion of this case would be useless, in view of the former decisions of this court construing the guaranty acts of Kansas, Nebraska and Oklahoma. The complaint of these appellants relative to unjust distribution of the assets of an insolvent state bank is fully answered by these decisions. The complaint as to unjust classifications is also answered there. The averment that it is not a proper exercise state bank is fully answered by those decisions. The that the state banks by being allowed to advertise their business would attract deposits from national banks to their detriment is also commented upon and answered in those opinions.

The question asked by appellants, whether

"the state could require all corporations, or all groceries, to help to guarantee each other's solvency, and where we are to draw the line,"

is answered by this court in the following language:

"but the last is a futile question and we will answer the others when they arise."

The complaint that national banks are deprived of their property without due process of law is fully answered in said decisions.

The broad complaint which gathers to itself all of the others, that the guaranty law is unconstitutional and void, is directly answered by said decisions.

The complaint that national banks have accounts with state banks which are not and can not be guaranteed is answered by this court as follows:

"to which it might be added that the plaintiffs are free to withdraw their credits and collect their debts now."

The complaint that the purpose and intent of the bank guaranty law is to require national banks to reorganize as state banks is fully answered as a futile question by the decision of this court.

The complaint that the effect of the law is to discriminate against national banks is fully answered in said decisions.

Also the complaint that the effect of the law is to make a favorite of depositors in state banks to the exclusion of the claims of national banks. In fact, it seems that every possible question has already been answered and decided against these complainants by this court.

CONCLUSION.

In conclusion we desire to say, these complainants, national banks, are entitled to every right which the constitution or laws of the United States guarantee to them. By the laws of Congress they are permitted to receive deposits. Congress, however, does not guarantee to them any certain amount of deposits. They are permitted to loan these deposits, to charge and receive a certain per cent of interest. These are permissions only. There is no provision in the constitution of the United States, nor in the national banking act, guaranteeing to them that any person desiring to open a bank account shall or will come to a national bank to make his deposit. It is not guaranteed to them that a person seeking a loan will come to a national bank to negotiate that loan. In other words, neither the constitution of the United States nor the national banking act guarantees to the national banks a profit or any certain volume of business. They are given certain rights and privileges, as banking institutions and governmental agencies. If these rights and privileges are not sufficiently liberal to permit them to compete with state banks, Congress may change and liberalize these laws at any time it sees fit. If a national bank sees fit to surrender its charter, it will be for the same reason for which it obtained its charter—the stockholders believed that by taking a charter as a national bank they would be mutually benefited. When that mutual benefit no longer exists, by the same process they may surrender that charter.

The state of Kansas has not made, either directly or indirectly, any assault upon national banks. The state of Kansas has simply, in the wisdom of its banking department and legislature, prescribed a rule for what it believes to be safe banking in Kansas. No court would at any time say that any law which goes to the safety of the banking business, and which in-

spires confidence in the commercial world, could possibly be unconstitutional.

By the national banking act, national banks have many advantages over state banks. Congress gave to national banks the right to issue currency. The same power also provided for such taxation upon currency issued by state banks as to make it unprofitable for state banks to issue bank bills. It will be conceded that a sovereign state has a right to build up a banking system. It has a right to safeguard that system in every way possible. The national government has the same right to build up a banking system and to safeguard it in every way possible. The two systems can not conflict. The great commerce of the world is done through the medium of checks upon the banks. Men take their all, with confidence, to a bank and deposit it there. The welfare of a community, the state and the nation is one of the highest objects to be obtained by these laws. Kansas believed she had largely solved the question of bank failures by adopting the guaranty law. The experience of over three years in Kansas shows that that belief is true. We submit that the law should be again sustained by this court in all of its particulars.

Respectfully submitted.

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Appendix.

BANK DEPOSITORS' GUARANTY LAW.

Session Laws of 1909, chapter 61.
General Statutes of 1909, page 130.
As amended by chapter 61, Session Laws of 1911.

AN ACT providing for the security of depositors in the incorporated banks of Kansas, creating the bank depositors' guaranty fund of the state of Kansas, and providing regulations therefor, and penalties for the violation thereof.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any incorporated state bank doing business in this state under the general banking laws of Kansas, having a paid-up and unimpaired surplus fund equal to ten per cent of its capital, and any bank which may after the passage of this act be authorized to do business in this state, and which shall have been actively engaged in the business of banking for at least one year, and having such surplus fund, is hereby authorized and empowered to participate in the assessments and benefits and to be governed by the regulations of the bank depositors' guaranty fund of the state of Kansas hereinafter provided for; provided, that the limitation of one year shall not prevent such participation by a new bank at any time in any city or town in which all banks shall have neglected or failed to become guaranteed banks under the provisions of this act for a period of six months after the taking effect of this act. Before any bank shall become a guaranteed bank within the meaning of this act a resolution of its board of directors, authorized by its stockholders, duly certified by its president and secretary, asking therefor, in form to be provided by the bank commissioner, shall be filed with said bank commissioner, who shall, upon the filing of such resolution, make a rigid examination of the affairs of such bank, and if it is found to be solvent, to be properly managed, and conducting its business in strict accordance with the banking law, he shall, after the bank shall have deposited with the state treasurer bonds or money hereinafter provided, issue to such bank a certificate stating in substance that said bank has complied with the provisions of this act, and that its depositors are guaranteed by the bank depositors' guaranty fund of the state of Kansas, as herein provided.

SEC. 2. Before receiving such certificate from the bank commissioner each bank entitled to the same according to section 1 of this act shall, as an evidence of good faith, deposit, and shall at all times maintain with the state treasurer (subject to the order of the bank commissioner when countersigned by the auditor of state) United States bonds, Kansas state bonds, or the bonds of any county, township, school district, board of education or city within the state of Kansas, to the

amount of five hundred dollars for every one hundred thousand dollars or fraction thereof of its average deposits eligible to guaranty (less its capital and surplus) as shown by its last four published statements; provided, that each bank shall so deposit not less than five hundred dollars, and the state treasurer shall issue his receipt therefor in triplicate, one to the bank, one to the auditor of state, and one to the bank commissioner. Such bonds only shall be accepted as the school-fund commissioners of the state of Kansas are permitted to buy, and shall bear the certificate of the attorney-general of the state of Kansas stating that in his opinion said bonds have been legally issued. Said bonds, or cash in lieu thereof, shall not be charged out of the assets of the bank, except as hereinafter provided, but shall be carried in its assets under a heading "Guaranty Fund with State Treasurer" until such time as said bank shall default in payment of assessments hereinafter provided for. In lieu of bonds the bank, at its option, may deposit money, which deposit shall be exchangeable for acceptable bonds when the bank elects to make the substitution. In addition to above each bank shall pay in cash an amount equal to one-twentieth of one per cent of its average deposits eligible to guaranty, less its capital and surplus, and the same shall be credited to the bank depositors' guaranty fund with the state treasurer subject to the order of the bank commissioner, and the state treasurer shall issue his receipt therefor in triplicate, one to the bank, one to the auditor of state, and one to the bank commissioner; provided, that the minimum assessment to be required from any bank shall be twenty dollars; provided further, that any bank seeking to participate in the assessments and benefits of this act after the first annual assessment for the year 1910 shall have been made, shall be assessed an amount approximately equal to its proportionate share of the money then in the bank depositors' guaranty fund after all losses shall have been deducted, the amount of such assessment to be determined by the bank commissioner. The last above mentioned assessment, however, shall not be required of new banks formed by the reorganization or consolidation of banks which have previously complied with the terms of this act. Upon the deposit and acceptance of such bonds (or money) and the payment of said assessment, then the payment of such deposits of said bank as are specified in this act shall be guaranteed as herein provided, and the bank entitled to its certificate.

SEC. 3. The bank commissioner shall, during the month of January of each year, make assessments of one-twentieth of one per cent of the average guaranteed deposits, less capital and surplus, of each bank (the minimum assessment in any case to be twenty dollars) until the cash fund accumulated and placed to the credit of the bank depositors' guaranty fund shall be approximately five hundred thousand dollars over and above the cash deposited in lieu of bonds, when he shall discontinue such assessments. Should such fund become depleted the bank commissioner shall make such additional assessments from time to time as may become necessary to maintain the same; provided, that not more than five such assessments of one-twentieth of one per cent each shall be made in any one calendar year. The treasurer of the state of Kansas shall hold this fund in the state depository banks as provided by law governing other

state funds, subject to the order of the bank commissioner, to be countersigned by the auditor of state, for the payment of depositors of failed guaranteed banks, as hereinafter provided. The state treasurer shall credit this fund quarterly with its proportionate share of interest received from state funds, computed at the minimum rate of interest provided by law, upon the average daily balance of said fund.

SEC. 4. When any bank shall be found to be insolvent by the bank commissioner, he shall take charge of such bank, as provided by law, and proceed to wind up its affairs; and he shall at the earliest moment issue to each depositor a certificate upon proof of claim, bearing six per cent interest per annum, upon which dividends shall be entered when paid, except where a contract rate exists on the deposit, in which case the certificate shall bear interest at the contract rate. Notice of the amount of each dividend to be paid creditors and the date when such payment is to be made shall be published in two consecutive issues of a paper of general circulation in the county or city in which said failed bank is located, and a corresponding notice posted on the door of the receiver's office, and interest shall cease on each dividend on the day named in such notice. The bank commissioner shall likewise publish a notice of the date upon which he will make payments of any balance due on such proof of claim, and interest shall cease on the day so advertised, and said proof of claim shall so state. After the officer in charge of the bank shall have realized upon the assets of such bank, and exhausted the double liability of its stockholders, and shall have paid all funds so collected in dividends to the creditors, he shall certify all balances due on guaranteed deposits (if any exist) to the bank commissioner, who shall then, upon his approval of such certification, draw checks upon the state treasurer, to be countersigned by the auditor of state, payable out of the bank depositors' guaranty fund, in favor of each depositor for the balance due on such proof of claim as hereinafter provided. If at any time the available funds in the bank depositors' guaranty fund shall not be sufficient to pay all guaranteed deposits of any failed bank, the five assessments herein provided for having been made, the bank commissioner shall pay depositors *pro rata*, and the remainder shall be paid when the next assessment is available; provided, however, that whenever the bank commissioner shall have paid any dividend to the depositors of any failed bank out of the bank depositors' guaranty fund, then all claims and rights of action of such depositors so paid shall revert to the bank commissioner for the benefit of said bank depositors' guaranty fund, until said fund shall have been fully reimbursed for payments made on account of such failed bank, with interest thereon at three per cent per annum.

SEC. 5. A penalty of fifty per cent of the amount of said assessment shall be added to the assessment of any bank not remitting as aforesaid within thirty days after receipt of notice of such assessment from the bank commissioner, and if any bank which shall have been assessed and notified as aforesaid shall fail to remit the amount of said assessment as herein provided, a sufficient amount of its bonds (together with the unexpired coupons) shall be immediately sold by the bank commissioner at public sale and the proceeds used to pay said assessment. Any balance remaining from the proceeds of such

sale after the payment of such assessment shall remain to the credit of the bank in the depositors' guaranty fund. The said balance, together with the remainder of the bonds (or cash in lieu thereof) shall be forfeited to the bank depositors' guaranty fund if the bank does not, within sixty days from default in payment of such assessment, remit the full amount of such assessment and penalty to date, and restore the amount of its bonds, or money pledged, as evidence of good faith. Upon the bank's failure to remit its assessments according to the terms of this act the bank commissioner shall immediately examine such bank, and if it is found in his judgment to be insolvent he shall take charge of and liquidate said bank according to law. If said bank be found solvent, the bank commissioner shall cancel its certificate as a guaranteed bank and cause to be displayed in its banking rooms, in a conspicuous place, continuously for six months, a card not smaller than twenty inches by thirty inches and in large, plain type, reading as follows: "This bank has withdrawn from the bank depositors' guaranty fund and the guaranty of its deposits will cease on and after ———." The date on this card shall be a date six months after the first posting of such card. Any bank electing to withdraw from the bank depositors' guaranty fund may do so by giving notice to the bank commissioner and displaying a card as aforesaid, and at the expiration of the six months as aforesaid may receive its bonds (provided always that said bank shall have paid assessments in full to date) when the affairs of all failed banks in liquidation at the expiration of said six months shall have been closed up and the said bank shall have paid its assessments on account of same.

SEC. 6. All deposits not otherwise secured shall be guaranteed by this act. The guaranty as provided for in this act shall not apply to a bank's obligation as indorser upon bills rediscounted, nor to bills payable, nor to money borrowed from its correspondents or others. Each guaranteed bank shall certify under oath to the bank commissioner at the date of each called statement the amount of money it has on deposit not eligible to guaranty under the provisions of this act, and in assessing such bank this amount shall be deducted from the total deposits.

SEC. 7. Each guaranteed bank, and each state or private bank not guaranteed by this act, shall keep a correct record of the interest rate and terms of each deposit on which it has paid or agreed to pay interest, and shall make a statement thereof under oath to the bank commissioner quarterly. After the passage of this act any officer of any bank who shall pay interest on different terms or in excess of a rate (which rate shall be uniform within each county) that shall be approved by the bank commissioner from time to time, on any form of deposits, or pays any interest on any savings deposit withdrawn before July 1 or January 1 next following the date of the deposit, or on any time certificate cashed before maturity, shall be deemed to be reckless and may be removed from office as provided by law, and such bank shall not be permitted to participate in the benefits of this act; provided, however, that any existing contract for higher rates of interest entered into before the passage of this act may be carried out unimpaired, and such existing contract shall not disqualify a bank from participating in the benefits of this act. Any managing officer of any bank guaranteed under this act, or any person acting in its behalf or

for its benefits, who shall hereafter pay or promise to pay any depositor, either directly or indirectly, any rate of interest on different terms or in excess of or in addition to the maximum rate of interest permitted by this act, or who shall, with intent to evade any of the provisions of this act, pledge the time certificate or other obligation of such bank as security for the personal obligation of himself or any other person, or who shall display any card or other advertising tending to convey the impression that the deposits of the bank are guaranteed by the state of Kansas, either directly or indirectly, shall disqualify the bank from further participation in the bank depositors' guaranty fund, and forfeit its bonds or money deposited in lieu thereof with the state treasurer for the benefit of such fund. Any managing officer of any bank, or any person acting in its behalf or for its benefit, who shall display any card or advertisement or make any statement to the effect that its deposits are guaranteed by the bank depositors' guaranty fund of the state of Kansas, when the bank is not authorized so to do under the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than five hundred dollars nor more than one thousand dollars.

SEC. 8. Any trust company heretofore organized under the laws of this state, and now in operation, may reorganize as a state bank under the laws of this state by filing with the secretary of state an amended charter signifying such purpose, to be approved by the Charter Board; and any private bank or national bank having the required capital, and being otherwise qualified, may reorganize as a state bank; or any newly organized bank taking over the business of another bank, otherwise qualified, may immediately become a guaranteed bank by depositing bonds or money and paying its assessments and otherwise complying with the provisions of this act.

SEC. 9. A solvent guaranteed bank, upon retiring from business and liquidating its affairs, shall be entitled to receive back from the state treasurer its bond or money pledged, after all depositors in such bank and all assessments on account of the guaranteed banks in liquidation have been paid in full, but not any part of any unused assessments that may be in the bank depositors' guaranty fund.

SEC. 10. Banks may be permitted, in the discretion of the bank commissioner, to exchange their bonds for others acceptable under this act, or be allowed to deposit in lieu thereof an equal amount in cash, which may in turn be withdrawn upon the substitution of bonds acceptable under this act.

SEC. 11. If at any regular or special examination of a guaranteed bank it shall be found to be violating any of the provisions of this act, the bank commissioner shall notify the bank, and the bank may be given thirty days in which to comply with the provisions of this act; and if at the expiration of this time such provisions have not been complied with the bank commissioner shall cancel its certificate of membership in the bank depositors' guaranty fund as herein provided and forfeit its bonds deposited with the state treasurer for the benefit of the bank depositors' guaranty fund.

SEC. 12. All bonds, and moneys deposited in lieu of bonds,

placed in the state treasury under this act shall be kept in said treasury separate from all other bonds and moneys and to the credit of the bond account of the bank depositors' guaranty fund, and shall be used for no other purpose. The state treasurer shall cause the coupons upon the said bonds to be cut thirty days before maturity and sent or delivered to the bank which deposited them; provided always, that said bank shall have paid all assessments in full to date.

SEC. 13. After the passage of this act any national bank doing business in the state of Kansas, under the laws of the United States, after an examination at its expense by the state bank commissioner, and upon his approval as to its financial condition, may at its option participate in the assessments and benefits of the bank depositors' guaranty fund of the state of Kansas upon the same terms and conditions as apply to state banks; provided, that such national banks shall forward to the bank commissioner of the state of Kansas detailed reports, in form to be provided by him, of its condition on the dates of the usual called statements of state banks (such report not to be published except at the option of the bank), and shall submit to one examination each year by his department (or oftener in his discretion) as provided by the banking laws of the state of Kansas, and pay the usual fees therefor. Should a national bank disregard or refuse to comply with any recommendation made by the bank commissioner, in conformity with the provisions of this act, it shall immediately be subject to the provisions and penalties of this act and its certificate of membership in the bank depositors' guaranty fund shall be cancelled.

SEC. 14. It shall be unlawful for any bank guaranteed under the provisions of this act to receive deposits continuously for six months in excess of ten times its paid-up capital and surplus, and the violation of this section by any bank shall cancel its rights to participate in the benefits of the bank depositors' guaranty fund, and work a forfeiture of its bonds deposited with the state treasurer for the benefit of such fund.

SEC. 15. For the purpose of carrying into effect the provisions of this act the bank commissioner shall provide forms and make requisition on the state printer for the necessary blanks, and all reports received by the bank commissioner shall be preserved by him in his office. The state treasurer is authorized to provide forms and make requisition on the state printer for the necessary blanks and record-books for his office.

SEC. 16. All acts and parts of acts in conflict with this act are hereby repealed in so far as they so conflict, but no provisions of any banking law or other statute of this state shall be construed to be amended, modified or repealed, except in so far as necessary to permit the unrestricted operation of this act as applied to banks participating in the privileges of this act.

SEC. 17. This act shall take effect and be in force from and after June 30, 1909, and its publication in the official state paper.

AN ACT relating to the security of county, township, city and school funds in certain cases.

Chapter 63, Session Laws of 1911.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That all officers in this state having the custody of county, township, city and school funds, or who may be charged by law with the duty of requiring specific bonds for the security of such funds when deposited in banks of this state, shall not require such bonds from banks participating in the bank depositors' guaranty fund of the state of Kansas, or from banks whose entire deposits are guaranteed by a bond of indemnity issued by any surety company authorized by the insurance commissioner of the state, whenever such funds are protected by such guaranty fund or surety company's bond of indemnity.

SEC. 2. This act shall take effect on and after its publication in the official state paper.

EXTRACT FROM REPORT OF THE COMPTROLLER OF THE CURRENCY.

Principal items of resources and liabilities of National Banks in Kansas.

Date.	No. of banks.	Loans, etc.	U. S. bonds.	Cash, etc.	Capital.	Surplus.	Profits.	Circulation.	Deposits.	Total assets.
1864	1	$113	$85	$63	$100	.....	$11	$30	$96	$279
1865	2	203	527	299	200	$4	20	76	2,479	2,910
1866	4	325	559	314	330	39	21	262	442	1,470
1867	5	409	709	268	400	89	35	311	583	1,948
1868	5	447	835	243	400	66	29	338	790	2,149
1869	5	476	812	270	400	63	46	338	667	2,102
1870	5	691	737	342	410	85	50	366	748	2,237
1871	11	1,279	1,096	384	802	114	71	606	1,288	3,632
1872	24	2,335	1,960	654	1,620	153	147	1,341	2,458	6,540
1873	26	2,896	2,223	584	1,965	261	170	1,490	2,589	7,304
1874	24	2,338	1,967	582	1,730	285	112	1,351	2,215	6,304
1875	19	2,147	1,585	438	1,420	283	110	1,086	2,089	5,412
1876	17	1,984	1,390	376	1,260	255	126	909	1,994	5,048
1877	15	2,071	1,230	409	1,065	253	106	792	2,111	4,728
1878	11	1,832	1,085	443	800	179	61	564	1,579	3,654
1879	12	1,562	1,244	557	838	185	80	675	2,138	4,489
1880	12	1,794	1,147	763	875	193	101	683	2,548	4,999
1881	13	2,509	1,170	787	925	225	142	679	3,239	5,872
1882	20	3,480	1,307	986	1,335	281	196	795	4,211	7,405
1883	36	5,996	1,599	1,717	2,250	365	296	1,031	6,994	11,865
1884	59	8,598	1,842	2,233	3,845	431	462	1,297	8,362	15,498
1885	74	10,731	2,055	2,301	4,996	669	573	1,436	10,090	18,818
1886	98	14,662	2,501	2,890	6,732	1,087	705	1,687	12,591	24,303
1887	139	21,307	3,285	3,863	10,531	1,435	970	2,295	17,741	34,948
1888	160	23,020	3,897	3,592	12,855	1,842	1,050	2,819	17,466	38,277
1889	161	24,185	3,870	2,233	13,182	1,879	957	2,826	18,838	39,859
1890	159	25,636	3,834	2,554	13,909	1,959	960	2,924	20,685	42,974
1891	147	23,624	3,526	2,526	13,012	1,859	928	2,633	19,042	39,554
1892	142	23,466	3,212	2,518	12,442	1,758	911	2,584	21,665	41,230
1893	136	19,966	3,144	2,787	11,647	1,750	771	2,589	16,683	35,266
1894	126	18,514	3,025	2,279	10,427	1,499	656	2,415	17,540	34,546
1895	122	19,648	2,943	1,975	9,967	1,470	671	2,369	16,827	32,898
1896	116	17,286	2,949	2,318	9,552	1,365	651	2,306	15,585	31,297
1897	103	18,682	2,763	2,195	8,567	1,398	678	2,111	19,188	34,719
1898	101	21,746	3,068	2,310	8,417	1,439	801	2,147	22,453	37,821
1899	98	22,212	2,768	2,487	8,092	1,402	923	2,077	24,306	40,431
1900	110	24,782	4,894	2,653	8,417	1,417	1,141	3,931	29,195	49,155
1901	119	29,003	5,781	3,669	8,635	1,527	1,484	4,993	35,361	60,843
1902	129	33,180	6,306	4,195	9,116	1,674	1,568	5,240	37,379	62,343
1903	146	38,680	7,525	4,415	9,936	1,896	1,905	6,106	42,482	70,975
1904	161	41,511	8,973	4,764	10,730	2,117	2,073	7,266	47,688	80,752
1905	171	44,761	8,681	5,410	10,313	2,554	2,042	7,395	50,236	84,156
1906	188	52,128	9,960	5,622	10,843	3,323	1,917	8,076	58,288	96,416
1907	203	60,130	10,776	6,450	12,032	3,921	2,145	8,673	64,978	110,474
1908	211	55,267	12,015	7,097	12,252	4,400	2,448	9,723	63,069	114,283
1909	209	62,883	11,201	6,930	12,092	4,849	2,470	9,812	67,721	118,323
1910	208	64,389	10,874	6,915	12,212	5,474	2,454	10,009	67,846	116,797
1911	210	58,793	10,627	6,001	12,012	5,363	1,986	9,617	63,986	107,844
1912	211	62,753	10,795	6,137	12,167	5,642	2,182	9,736	67,753	114,443

EXTRACT FROM REPORT OF BANK COMMISSIONER OF THE STATE OF KANSAS FOR 1912.

STATEMENT showing total deposits and legal reserve of all state and private banks doing business in the state at the date of each call since the banking department was established.

DATE OF CALL.	No. of banks.	Total deposits.	Legal reserve.	Reserve, per cent.
1891—October 13	414	$15,778,488.82	$5,477,272.01	34.09
1892—January 2	439	17,377,977.90	6,703,667.62	38.60
March 29	408	18,121,839.48	6,896,982.25	38.06
June 4	444	18,445,944.50	7,341,835.42	39.80
September 2	447	20,143,884.02	8,362,347.49	41.41
1893—January 3	445	21,139,913.13	7,449,205 23	35.24
April 5	447	21,977,914.17	7,963,312.98	36.32
June 20	434	19,219,525.68	6,808,618.16	35.40
October 3	420	15,299,999.65	6,060,289.40	39.54
1894—January 10	414	15,427,493.75	6,194,706.71	40.15
May 4	410	16,764,322.45	7,344,841.18	43.82
July 18	410	16,755,869.59	5,434,788.80	44.30
November 2	412	16,871,103.51	6,[illegible]497.33	39.00
1895—January 10	405	17,112,465.11	6,575,501.37	38.42
April 15	407	16,874,275.32	6,683,140.23	39.60
July 11	408	16,587,434.59	6,257,296.73	37 54
December 24	404	16,190,789.18	5,996,897.11	37.03
1896—February 28	396	15,526,831.85	6,023,529.19	38.80
June 1	395	15,233,788.39	5,646,149.78	37.58
September 1	392	15,220,107.39	6,439,656.98	42.31
December 19	378	14,553,633.61	6,319,891.57	43.42
1897—March 9	381	15,975,501.76	6,656,845.52	41.67
June 21	377	17,484,057.28	8,169,879.19	46 73
October 5	383	22,004,873.53	11,072,745.53	50.32
December 24	372	22,150,266.08	10,184,854.89	46.00
1898—April 5	365	22,318,164.98	10,466,693.57	46.89
July 14	364	22,394,956.31	10,835,915.36	48.34
October 5	366	22,992,900.37	10,463,441.13	45.50
December 31	373	22,893,869.24	9,966,668.55	43.49
1899—March 18	364	23,041,693.68	10,174,655.05	44.15
June 20	368	24,091,745.05	11,233,475.48	46.62
September 7	383	25,956,270.86	12,074,189.28	46 51
December 2	386	26,085,545.21	10,786,762.22	41.35
1900—February 13	387	27,125,274.60	11,274,840.13	41.56
June 4	384	28,837,263.74	13,740,867.01	47.65
September 1	388	31,626,335.44	16,285,287.42	51.49
December 13	392	31,644,396.54	14,320,611.16	45.22
1901—February 9	395	33,760,872.76	16,057,233.64	47.56
May 31	410	37,651,945.60	19,052,941.89	50.60
September 30	422	43,000,004.31	22,879,489.79	53.20
December 10	428	40,564,787.48	19,008,566.48	46.85
1902—March 28	437	39,830,429.49	17,060,651.78	42.83
June 16	453	38,232,068.08	15,394,002.50	40.26
September 2	462	40,059,290.87	17,008,196.11	42.45
November 25	477	40,135,176.58	15,352,451.44	38.25
1903—March 14	488	44,658,968.64	18,887,265 60	44.53
June 9	496	44,835,238.43	18,953,987.36	42.27
September 9	502	47,690,056.04	20,379,183.53	42.78
November 17	515	45,607,106 39	16,456,394.17	36.30
1904—March 14	523	51,280,291.78	22,492,690.94	43.85
June 9	534	49,953,422.05	21,469,582.38	43.01
September 6	549	52,006,925.42	22,610,988.56	41.55
November 10	553	51,576,972.55	20,489,198.91	39.76

Date of Call.	No. of banks.	Total deposits.	Legal reserve.	Reserve, per cent.
1905—January 11	558	$1,554,507.74	18,228,059.28	36.54
April 15	573	53,110,329.41	20,254,206.04	38.22
August 25	607	57,419,247.38	23,794,949.38	41.33
November 9	616	57,927,640.24	22,152,554.03	38.24
1906—January 29	626	62,342,658.22	24,754,643.55	39.70
April 6	633	63,941,442.87	25,977,824.64	40.78
September 4	665	66,282,416.60	28,698,856.14	42.04
November 12	682	66,773,590.37	23,714,005.46	35.50
1907—January 26	701	$71,773,424.15	$28,958,135.58	37.60
May 6	721	77,589,882.91	31,388,481.20	40.30
August 22	736	82,410,884.44	32,496,125.45	40.60
December 3	742	73,047,716.79	26,102,819.22	36.00
1908—March 31	747	76,716,457.42	32,971,583.09	43.00
June 13	749	75,563,481.15	30,235,117.22	40.00
September 1	759	83,338,563.09	35,520,453.52	43.00
November 27	764	84,177,089.63	32,782,511.59	40.15
1909—March 16	777	98,121,227.98	37,072,864.89	40.00
June 30	792	88,490,862.28	31,647,493.98	35.70
September 29	819	97,217,510.74	35,971,848.08	37.00
December 31	831	99,506,213.30	34,567,001.17	34.73
1910—April 1	843	102,667,040.72	36,696,445.95	35.74
June 11	855	94,212,934.20	30,788,705.07	32.60
August 15	860	96,337,192.11	33,201,353.30	34.50
November 23	869	91,761,236.61	28,838,967.32	31.00
1911—March 16	869	96,254,685.82	34,450,428.66	35.80
June 7	875	92,755,922.82	32,406,235.03	35.00
August 28	888	96,882,801.16	35,540,431.35	36.70
December 27	897	100,374,448.86	33,972,968.72	33.00
1912—April 2	896	102,128,200.44	35,690,892.30	34.95
June 14	899	98,687,668.69	31,632,049.82	32.20
September 11	902	106,049,142.85	35,976,369.30	33.7
December 4	902	105,570,314.91	33,985,645.69	32.19

The report of the Bank Commissioner of the state of Kansas for the year 1912 shows that the number of banks which have qualified under the bank guaranty law is 456.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1912.

ABILENE NATIONAL BANK *v.* DOLLEY, BANK COMMISSIONER OF THE STATE OF KANSAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

No. 175. Submitted March 5, 1913.—Decided March 17, 1913.

The Kansas Bank Depositors' Guaranty Act is not unconstitutional as against national banks either because it discriminates against them in favor of state banks, impairs the obligation of existing contracts, or deprives them of their property without due process of law.

The statutes of the United States where they do not prohibit competition with national banks do not forbid competitors to succeed.

Contracts made after a law is in force are made subject to it, and impose only such obligations and create only such property as the law permits.

The constitutionality of this statute has already been upheld as to state banks in *Assaria State Bank* v. *Dolley*, 219 U. S. 121.

179 Fed. Rep. 461, affirmed.

THE facts, which involve the constitutionality of the Kansas Bank Depositors' Guaranty Act, are stated in the opinion.

Mr. John Lee Webster, Mr. B. P. Waggener, Mr. Chester I. Long, Mr. J. W. Gleed and *Mr. John L. Hunt* for appellants:

The Kansas Bank Depositors' Guaranty Act discrimi-

nates against national banks as instrumentalities of the public service, and destroys their business success and efficiency. *Farmers' Natl. Bank* v. *Dearing*, 91 U. S. 29, 33; *Mercantile Bank* v. *New York*, 121 U. S. 138, 155; *Van Allen* v. *Assessors*, 3 Wall. 573.

The Kansas statute gives preference to private depositors in state banks to exclusion of national banks as creditors and results in unequal distribution of the assets of an insolvent state bank to the disadvantage of national banks. *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283.

The Kansas statute was intended to and does injuriously affect and unlawfully discriminate against national banks. *Davis* v. *Elmira Savings Bank*, 161 U. S. 275; *West. Un. Tel. Co.* v. *Kansas*, 216 U. S. 1.

The law will presume that the legislature knew national banks could not accept of the guaranty provisions and that the legislature intended to discriminate against them and induce them to reorganize as state banks. *Henderson* v. *New York*, 92 U. S. 259; *Easton* v. *Iowa*, 188 U. S. 220, 238; *Bailey* v. *People*, 190 Illinois, 28, 36; *Mugler* v. *Kansas*, 123 U. S. 623, 661; *Minnesota* v. *Barber*, 136 U. S. 313, 319; *Galveston &c. Ry. Co.* v. *Texas*, 210 U. S. 217, 227; *Crutcher* v. *Kentucky*, 141 U. S. 47; *West. Un. Tel. Co.* v. *Kansas*, 216 U. S. 1.

Bank guaranty laws are all conducive to improvident banking and are destructive to national banks.

National banks by reason of the effect of the guaranty act upon them have a right to challenge its constitutionality. *Chicago* v. *Collins*, 175 Illinois, 445; *Hutchinson* v. *Beckham*, 118 Fed. Rep. 399; *Old Colony Trust Co.* v. *Atlanta*, 83 Fed. Rep. 39; *S. C.*, 88 Fed. Rep. 859; *Cicero Lumber Co.* v. *Cicero*, 176 Illinois, 1; *Merchants' Exchange* v. *Knott*, 212 Missouri, 616.

The national banks as taxpayers have a right to maintain this suit.

The features of the bank guaranty law which make it

obnoxious to national banks are so connected with other sections of the act as to make this statute unconstitutional. *Employers' Liability Cases*, 207 U. S. 463, 501; *Ill. Cent. R. R. Co.* v. *McKendree*, 203 U. S. 514; *Trademark Cases*, 100 U. S. 82; *Baldwin* v. *Franks*, 120 U. S. 678, 685; *Warren* v. *Mayor*, 2 Gray, 84; *West. Un. Tel. Co.* v. *Austin*, 67 Kansas, 208.

Mr. John S. Dawson, Attorney General of Kansas, *Mr. Fred S. Jackson* and *Mr. G. H. Buckman* for appellees:

Complainants do not show an interest, the nature of which entitles them to question the constitutionality of the statute attacked by them. *Marbury* v. *Madison*, 1 Cr. 137; 8 Cyc. Law & Proc. 787; *State* v. *Smiley*, 65 Kansas, 240; *S. C.*, 196 U. S. 447; *Clarke* v. *Kansas City*, 176 U. S. 114; *Albany Co.* v. *Stanley*, 105 U. S. 305; *Pittsburg* v. *Montgomery*, 152 Indiana, 1; *Tyler* v. *Justices*, 179 U. S. 405; *National Bank* v. *Mayor*, 100 Fed. Rep. 29; *Easton* v. *Iowa*, 188 U. S. 234; *Commonwealth* v. *Merchants' Bk.*, 168 Pa. St. 309; *Hamilton* v. *Vicksburg S. P. R. Co.*, 119 U. S. 280; *Turpin* v. *Lemon*, 187 U. S. 51.

The real question involved in this case is whether or not a State has the right to pass a law controlling its own corporate creatures. *Dolley* v. *Abilene National Bank*, 179 Fed. Rep. 463; *Heath & Milligan Mfg. Co.* v. *Worst*, 207 U. S. 354; *Ozan Lumber Co.* v. *Union Nat. Bk.*, 207 U. S. 256; *People* v. *Naglee*, 1 California, 232; *A., T. & S. F. Ry. Co.* v. *Matthews*, 174 U. S. 106; *Insurance Co.* v. *Daggs*, 172 U. S. 562; *Mutual Life Ins. Co.* v. *Mettler*, 185 U. S. 325.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill to restrain the putting into operation of the Kansas Bank Depositors' Guaranty Act (March 6, 1909, Sess. Laws 1909, c. 61), and to have it declared un-

constitutional. It seems to have been filed at about the same time as the bill in *Assaria State Bank* v. *Dolley*, 219 U. S. 121, in which case the law was upheld. The main difference between the two suits is that the other was brought by state banks, and this by national banks. The Circuit Court of Appeals held the bill bad on demurrer, 179 Fed. Rep. 461; 102 C. C. A. 607; and it was dismissed. A writ of certiorari was denied by this court. 218 U. S. 673. In view of the decisions in 219 U. S. and in this case below we shall add comparatively few words.

The ground peculiar to this case is an alleged discrimination against national banks. Allegations in the bill as to the purpose and intent of the statute of course are immaterial. They introduce no new facts, and leave the question as it would be without them, namely, whether anything can be discerned in the terms or effect of the act that infringes the plaintiffs' constitutional rights. A good deal of the argument seems to be that the statute will make state banks so attractive to the public that the national banks will suffer. It is replied that experience has not justified the prophecy. But even if it had, there is nothing to hinder the States from permitting a competing business and doing what Kansas has done with intent to make it popular and safe. The national banks are free to come into the scheme. The suggestion that they could not come in and remain national banks, is simply a statement of the situation of all competitors. They cannot retain the advantages of their adverse situation and share those of the parties with whom they contend. The statutes of the United States when they do not attempt to prohibit competition with national banks do not forbid competitors to succeed.

The specific discrimination pointed out is that under the Kansas statutes the national banks do not share equally with depositors in the assets of an insolvent state bank. The bill alleges that the plaintiffs necessarily have

and make deposits with state banks, and that banks necessarily borrow money from other banks and rediscount paper in other banks, and that the obligation of their contracts will be impaired and they will be deprived of their property without due process of law, contrary to Art. I, § 10, and the Fourteenth Amendment of the Constitution. The section of the statute specified as having this effect is § 4, which contemplates the primary application of the assets of the bank and the double liability of stockholders to depositors. It is replied that the word depositors obviously was used by mistake for creditors and that the statute was amended by substituting the latter word in 1911. (March 13, 1911, Sess. Laws 1911, c. 62, p. 103, § 1.) But further the language of the bill and the argument show that the complaint refers to future transactions, not to past. There is nothing sufficient to raise a question as to dealings before the law went into effect. Contracts made after the law was in force of course are made subject to it, and impose only such obligations and create only such property as the law permits. *Denny* v. *Bennett*, 128 U. S. 489, 494. *Cross Lake Shooting & Fishing Club* v. *Louisiana*, 224 U. S. 632, 638, 639.

The greater part of the bill is taken up with objections to the scheme of the statute in which the plaintiffs have no concern and that have been disposed of by the former decision of this court upon the Kansas act. There is nothing in it that calls for further remark.

Decree affirmed.